Undoing Plessy: Charles Hamilton Houston, Race, Labor, and the Law

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UNDOING PLESSY: CHARLES HAMILTON HOUSTON, RACE, LABOR, AND THE LAW

by

Gordon Andrews

A Dissertation
Submitted to the
Faculty of The Graduate College
in partial fulfillment of the
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Western Michigan University
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Undoing Plessy: Charles Hamilton Houston, Race, Labor, and the Law, 1895-1950, explores the manner in which African Americans countered racialized impediments during the first half of the twentieth century by attacking their legal underpinnings. Specifically, this work explores the professional life of Charles Hamilton Houston, and the degree to which it informs our understanding of change in the pre-Brown era. There were a wide range of forces at work, from individuals, organizations, and institutions, to government in its various forms (local, state, and federal), complicating any strategy to reformulate the parameters of equality. Using both labor and education law as the focus of this study, I examine the complicating issues of race, the state, and the workplace to demonstrate the interplay of forces which together constituted the structure Charles Houston and others sought to dismantle. Houston’s life was replete with examples to illustrate the gains that could be made by an African American who sought to exercise his own agency, and contest the imposed boundaries that limited potential.
The dissertation is divided into three parts, *Establishing Plessy*, *Confronting Plessy*, and *Undoing Plessy*, providing the legal and historical context to Houston’s life. I argue that major inroads into the dismantling of Plessy were made after the incorporation doctrine was implemented through the Supreme Court’s 1925 decision in *Gitlow v. New York*. The Gitlow decision rejuvenated the 14th Amendment’s original intent, rescuing it from the reactionary and corporatist interpretations that relegated African Americans and labor to the predations of individual, local, state, and federal caprice. Early in his career with *Gitlow* providing the nexus of race, labor, and the state, Houston developed a three-pronged approach, taking advantage of the courts, the workplace, and politics, as a strategy to broaden the attack. By rejecting the purely legalistic approach regularly attributed to Houston, I assert that Houston’s successes were linked to his understanding of the nature of race, labor, and the law in America.
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Gordon Andrews
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CHAPTER I

INTRODUCTION

"Undoing Plessy: Charles Hamilton Houston, Race, and the Law" explores the manner in which African-Americans countered racialized impediments during the first half of the twentieth century by attacking their legal underpinnings. Specifically, this work explores the professional life of Charles Hamilton Houston, and how it informs our understanding of change in the pre-Brown era. There were a broad range of forces at work, from individuals, organizations, and institutions, to government in its various forms (local, state, and federal), complicating any strategy to reformulate the parameters of equality. Using politics, labor, and law as the focus of this study, the complicating issues of race, the state, and the workplace will demonstrate the interplay of forces which together constituted the structure Charles Houston and others sought to dismantle. Houston’s life offers many examples illustrating the gains made by African Americans who sought to exercise their own collective agency, contesting the imposed boundaries that limited their lives. The second purpose of this work is to explain a paradox associated with Houston’s life. That is, given his historic successes in effecting change in the pre-Brown era, why does he remain a relative unknown to the public?
Born in 1895 in Washington D.C., Charles Hamilton Houston died in 1950 and is probably best remembered as the civil rights attorney who laid the groundwork for the *Brown v. Board* decision of 1954. His life was dedicated to the emancipation of oppressed people, thus he was inspired early on to choose the law as a tool to become, in his words, a "social engineer." Throughout a career that spanned more than a quarter century, he earned a Supreme Court record of 10-1. Between 1925 and 1950 Houston served as Vice Dean of the Howard Law School, collaborated with attorneys in the Scottsboro case, headed the legal wing of the NAACP, and represented African American railroaders in an effort to integrate white unions.

Notably, as special counsel to the NAACP, he taught and hired Thurgood Marshall, and was special council to, and later a member of, the Fair Employment Practices Commission, while simultaneously working tirelessly in private practice to improve the lives of African Americans. Houston’s life provides a unique lens through which one may more accurately view the threads of race, labor and the law as they are woven throughout American society. Houston understood the difficulties facing black workers in America, and by marshalling his considerable skills as an attorney and leader, was able to construct a strategy that fought for full integration by changing the laws of the United States at the highest level.

This study will also argue that major inroads into the dismantling of Plessy were made after the incorporation doctrine was implemented through the Supreme Court’s 1925 decision in *Gitlow v. New York*. The Gitlow decision rejuvenated the 14th Amendment’s original intent, rescuing it from the reactionary and corporatist
interpretation that relegated African Americans and labor to the predations of individual, local, state, and federal caprice. Charles Houston’s legal career, spanning the first quarter century following incorporation, provides tremendous insights into the nexus of race, labor, and the state, resulting in the expansion of civil rights. By examining Houston’s life in this context we can best understand the impact of his pragmatic approach to undoing Plessy. With unparalleled success, Houston developed a three-pronged strategy between 1925-1950 that focused on the courts, the workplace, and politics, securing the expansion of labor rights and civil rights for African Americans.

The labor movement in the United States has long presented historians with stultifying hurdles in their attempts to navigate the complexities and nuanced relationships that exist(ed) within working class America, particularly as they relate to the issues of race, ethnicity, and gender. Robert Zieger has identified three main areas of historiographical inquiry; these are classified as "wages of whiteness," "black agency," and "public policy" schools.¹ Some argue that there has always been an inherent value in maintaining the “whiteness” that was cultivated by working whites. Whiteness studies offer a nuanced explanation of the way in which workers early in American history nurtured a republican notion of work and community that excluded blacks. These studies have also documented how workers exerted their own agency, necessarily juxtaposed against African Americans who would always be the “other,”

in order to preserve their status regarding wages, community, and governance. However, whiteness studies heavily discount evidence that appeared self evident to Houston and others of a notion of black inferiority cultivated by elites. It was imbodied in slavery itself, as well as laws precluding whites from teaching slaves to read, anti-miscegenation laws, the black codes, using the courts to impose de jure segregation, and so on, throughout American history. These examples defy the singularly developed working class notion of whiteness.

*Undoing Plessy: Charles Hamilton Houston, Race, Labor, and the Law* falls clearly within the school of black agency, as its explanatory power more accurately addresses Houston's life and approach to solving inequality. The narrative of Houston’s career commonly places him within the legalistic tradition trying cases that move in a teleological fashion toward the groundbreaking case of *Brown v. Board* (1954) ultimately argued by Thurgood Marshall. Instead what is found is that Houston early on formulated an approach to eradicating inequality that critically included the use of the law, politics, and the workplace, as part of a triangulated and pragmatic approach. Understanding that a purely legalistic approach would invariably fall short of eliminating the rampant inequality that plagued African Americans, Houston’s knowledgeably negotiated all three avenues.

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22 David Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (New York: Routledge, Chapman and Hall, 1991) was the first in a series of influential works in “whiteness” studies that have since been taken up by a number of scholars and advanced to include the areas of culture, immigration, progressive reforms. For example, read Michael Frye Jacobson’s *Whiteness of A Different Color: European Immigrants and the Alchemy of Race*, Gary Gerstle’s *American Crucible: Race And the Nation In the Twentieth Century*, or Noel Ignatiev’s *How the Irish Became White* for excellent examples of “Whiteness” studies.
In asserting the primacy of black agency *Undoing Plessy* also confronts the public policy school as which asserts, in part, that blacks actually experienced greater freedom during the Lochner Era, when freedom of contract was celebrated as a virtue. Kenneth Mack deftly addresses the inadequacies of Bernstein's argument in his article *Rethinking Civil Rights Lawyering and Politics in the Era Before "Brown."* Mack fittingly explains that freedom of contract was well understood by those living at the time, and historians now, as a not so subtle means of excluding African Americans from equal access to jobs and fair wages. The public policy school also argues that labor laws enacted to protect workers were responsible for discrimination against blacks. They argue that laws allowed unions to become inefficient labor cartels excluding blacks from employment, disregarding the notion that racism exists in both unions and ownership as too simple an explanation. Instead it is argued that “while employers usually paid for discrimination, union members usually benefitted from it.” This ignores the fact that labor never benefits from being divided and that corporations have long played on any divisions, race being the most obvious. This argument too is countered by Houston’s example, as the very laws others identify as harmful to African Americans, were actually used by Houston to gain greater freedom for African Americans, not less.

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By placing the life and career of Houston within the historiography of the long Civil Rights Movement this work explains how it is that someone of Houston’s stature and influence in American history could still be relatively unknown to the broader public. The lack of understanding and awareness of the public is best explained by the popularity of the short civil rights movement and the fact that teachers in K-12, and the collegiate level rarely, if ever, touch on the work of Houston. Instead the narrative usually begins with Thurgood Marshall and *Brown v. Board of Education* (1954), moves through the Montgomery bus boycott, the rise of Dr. Martin Luther King, moves in dramatic fashion to the 1963 march on Washington, and its resolution with the 1965 Civil Rights Act.

This chronology while not comprehensive demonstrates how someone like Charles Houston becomes excluded from the established narrative. Rather he appears in a sentence here, or footnote there, with every now and then a few pages dedicated to his contributions. The success of the short civil rights movement obscures the contributions of many of the founders of the movement. By placing the movement within the lens of the long civil rights movement we gain a richer understanding of the struggle for equality. This is not a new argument, but by reexamining Houston’s life there is new insight the value of a more historically expansive narrative of the civil rights movement.

There are three book length works that address Charles Hamilton Houston life's work, all of which fall under the legalistic interpretation of the pre-Brown era. Legalism attributes progress made in the pre-Brown era to African American lawyers,
most notably Houston, who used the courts as the sole avenue towards achieving equality for African-Americans in the United States. Beginning with *In Any Fight Some Fall*, authored in 1975 by Geraldine R. Segal, provides a small, but insightful first glance into Houston's life cataloging his accomplishments in one hundred pages. Though thin, it provides many useful interviews and illuminates Houston's life from his childhood to his days as an accomplished lawyer who used the courts to end de jure segregation.⁵

Genna Rae McNeil's 1983 treatment of Houston, entitled *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights* represents the most thorough biographical treatment of the man, framing his life in the pre-Brown era as a continuous struggle to reverse de jure segregation, laying the groundwork that ultimately lead to *Brown v. Board* in 1954. *Root and Branch: Charles Hamilton Houston, Thurgood Marshall, and the Struggle to End Segregation*, written by Rawn James Jr. was released in 2010, and examines the relationship between Charles Houston and Thurgood Marshall as they worked together tirelessly to extricate African Americans from a segregated America. After Houston's death in 1950, Thurgood Marshall, who had been hand-selected by Houston to replace him in the NAACP, carries the fight forward with a cadre of lawyers, almost all of whom were trained by Houston, to the celebrated *Brown v. Board* (1954).⁶ All three works offer revealing insights into the life Charles Hamilton Houston, however, they also tend to

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frame the pre-Brown era as an inevitable march through the courts, with *Brown*, or a case like it, ending de jure segregation.

Instead, this work will frame Charles Houston as a legal pragmatist, whose intellectual legacy places him between the accommodationist, self-help approach of Booker T. Washington, and W.E.B. Du Bois, to whom accommodation was anathema, and who ultimately left the country after decades of frustration attempting to achieve equality for African Americans. I will argue that Houston, early in his career, developed a three-prong approach, taking advantage of the courts, the workplace, and politics, as a strategy to broaden the attack. By exercising his vision, Houston was able to perceptively and presciently take maximum advantage of a system that too often marshaled its forces to thwart the constitutional rights of African Americans. By rejecting the legalistic approach regularly attributed to Houston, this study asserts that Houston’s successes were linked to his understanding of the nature of race labor and the law in America. *Undoing Plessy: Charles Hamilton Houston, Race, Labor, and the Law* is divided into three parts, Establishing Plessy, Confronting Plessy, and Undoing Plessey, providing historical context to Houston’s life’s work.

Part one, *The World of Plessy and Houston*, includes two chapters, *Establishing Plessy*, and *Plessy and Its Aftermath*, that use the 1890’s as a point of embarkation, allowing for an exploration of the intellectual, legal, and social currents that framed the condition of race at the turn of the twentieth century. Among the most notable of these were the death of Frederick Douglass, and the expanding
influence of Booker T. Washington, as witnessed by his speech in Atlanta. The following year, the U.S. Supreme Court announced its decision in *Plessy v. Ferguson*, codifying segregation. Together the two chapters seek to explain the confluence of forces between 1890s and 1900 that framed the struggles workers in the twentieth century encountered, while also establishing the historical roots of Houston’s family.

Part two, *Confronting Plessy*, consists of two chapters entitled *Saving the World for Democracy*, and *Exporting Race: World War I and Segregation*. These chapters trace Houston’s life from his undergraduate career at Amherst, his military career as a member of the first African-American officer corps in World War I, to his return after the War and his decision to attend Harvard. Houston’s decision to enter the legal profession can be traced to his own encounters with racism. Part II also explores the role of labor during the First World War, at home and abroad, as the United States government found itself one of the largest employers of African-Americans after 1900. Additionally, Confronting Plessy addresses how World War I and the trans-Atlantic nature of the war influenced labor and race in the U.S., both before and immediately after the war.

Part three, entitled *Undoing Plessy*, contains the final four chapters: Chapter 5, *Incorporating Rights: The Nexus of Race, Labor, and the Law* Chapter 6; The Political Economy of Scottsboro; Chapter 7, *Race, Presidential Power, and Agency*; and Chapter 8, *Undoing Plessy*. These chapters trace the critically important incorporation of the 14th Amendment through Houston’s personal, legal, and political battles to improve the lives of working African Americans. A critical Supreme Court
case in 1925, *Gitlow v. New York*, surrounding the issue of free speech compelled the court to use the long dormant Fourteenth Amendment, to nationalize the Bill of Rights. After 1925, Houston fought for equal rights using the Constitution as his guide, navigating the Depression, opportunities presented by New Deal legislation, and the administrations of F.D.R. and Harry Truman. From 1925 to 1950 he would stake his career in redefining freedom for African-Americans by altering the existing structure to accommodate the American Creed. In 1929 he declared that “a lawyer is either a social engineer, or he’s a parasite on society.”

Clarifying his words, Houston was specific in his instructions to future lawyers, the most salient of which for this study are: “to recognize that the written constitution and inertia against its amendment give lawyers room for social experimentation and therefore, ‘to use...the law as an instrument available to [the] minority unable to adopt direct action to achieve its place in the community and nation; to engage in a carefully planned [program] to secure decisions, rulings and public opinion on...broad principle[s] while ‘arousing and strengthening the local will to struggle.’”

These obligations are indicative of the strategy he employed throughout his life, and reflect the myriad historical themes that impact people’s daily lives as they proceed through the political, economic, social, and cultural landscapes. In the first half of the twentieth century, African Americans used various strategies to confront inequality, employing methods developed by race advancement organizations, as well

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8 Ibid., 217.
as the efforts launched by untold individuals, and occasionally by the state. Houston’s foresight and, frankly, legal genius, were decisive in attacking inequality. How to best assault an apartheid system that influenced every facet of U.S. society is the major issue this project seeks to address. Houston’s role within this struggle for freedom will effectively illustrate the interplay between agency and the state.

Houston’s seeming ubiquity within the formal and informal power elites, both black and white, citizens and leaders, clarifies his commitment across racial and class lines. His life’s work brought him into contact, and at times conflict, with many of the country’s most recognizable voices over how to best advance the interests of African Americans. This is perhaps best illustrated by considering at the historically well documented tensions between Booker T. Washington (outside) and W.E.B. Du Bois (inside, until his frustration led him to become an expatriate), or between Du Bois and Marcus Garvey. Houston, however, negotiated a Socratic path staked between that of Booker T. Washington and W.E.B Du Bois, and was convinced that if true change was to take place within the country, it was going to have to be accomplished through multiple fronts inside the system.

Examining Houston’s life from a labor perspective significantly enhances the larger economic issues surrounding civil rights in the United States. Franklin Delano Roosevelt in 1944 pronounced that ‘a second Bill of Rights… an economic bill of rights’ was needed to guarantee all persons jobs, health care, housing, and more in an
effort to outline the centrality of work and security in obtaining freedom.  

More recently, the historian Zaragosa Vargas elaborated on that notion, insisting that "workers rights are civil rights." Better than most, Charles Houston understood that the right to work was inherently necessary to achieve real, not just perceived freedom. To that end, situating Houston’s life within the contested cultural and political realities of his time enlarges our understanding of what it means to work and be free in America during the first half of the twentieth century.

The nature of the problem examined here relates to the way in which African American workers were able to make demonstrable gains during these decades. In particular, these gains will be revealed in areas significant to workers that include the workplace, access to unions, housing, and equality before the law at the local, state and federal levels. To understand Charles Houston’s contributions to those who labored in the black community, and more broadly in American society, the contextualizing of his life within the narrative of United States history is required. Houston’s life was intimately connected with those conflicts, and his strategies and successes will be shown to be instructive in understanding his motivations and success. There is a satisfying symmetry in Houston’s life in that railroads serve as bookends. He was born in 1895, as Plessy v. Ferguson (1896) waited to legitimate separate but equal, and he died while fighting to end racial exclusion in the railroad

unions. It is to that era, the Houston family, and the state of Louisiana, that this work now turns in order to understand how Plessy was established.
It was not uncommon for African Americans born in the late nineteenth and early twentieth century's to have family members born into slavery. Those in bondage linked their families to a long history of struggle and liberation. Houston's grandparents on his father's side were born into slavery, each achieving freedom through dramatically different means. Thomas Jefferson Hunn was born in Missouri to an institution and an owner that were equally cruel. Thomas knew that his freedom and that of his family would ultimately hinge on his ability to read, which would allow him to become a Baptist minister. His master loathed any slave's efforts to educate himself, and burned Hunns' books to punish and deter him from any attempt at education.  

After suffering one too many attacks by his owner, Hunn resolved to escape regardless of the consequences. It was after a "brutal horsewhipping" upon his third attempt that he would flee, despite an injury to his ankle which left him permanently hobbled. "There was no moon, and he hoped that the soft swish of the night breeze would conceal any crackling of the twigs he might cause in his flight. Then he swiftly made his way to the free state of Illinois, where he remained for two

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12 Ibid.
weeks while he made plans to arrange for the escape of his family—his wife and five children.”

There T.J. (as Thomas was called) changed his name from Hunn to Houston. Committed to helping those still in bondage, his moral and philosophical commitment to justice led him to join the Underground Railroad and also work to become a Baptist minister. Traveling back and forth from Missouri to Illinois for the Underground Railroad, he continued to work at his ministry as well as supplemental jobs to earn a living. As if leading the enslaved to freedom were not enough, during the Civil War Thomas attached himself to Ulysses S. Grant’s regiment, ultimately serving as Aide de Camp through the campaign to Richmond, and as an honorary pallbearer, returning Abraham Lincoln’s body to Springfield, Illinois.

It is easy to see how Houston’s grandmother, Katherine Kirkpatrick, was captivated by a man like Thomas Jefferson Houston. She, too, was born to enslaved parents in Kentucky, and would eventually find freedom through escape. Katherine was not beaten by her original owners, however she suffered an equally wrenching experience, as she was torn from her mother and father at the age of seven to accompany her master’s son. Slavery’s decimating impact on family structure is well documented, and the Kirkpatricks’ experience unfortunately mirrored that of too many other slave families. When her original owner decided to follow his son to

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13 Ibid.
Paducah, Kentucky, he brought Katherine’s mother, reuniting mother and daughter, but left her father behind, forcing the separation of husband and wife.

Determining the number of times this cycle was repeated is a statistical impossibility, and can never account for the unspeakable sorrow that must have accompanied these devastating separations. It likely accounts, however, for the ferocity with which both Katherine and Thomas would later guard their family. The two met while Thomas Houston was preaching, and they developed a relationship that led to their marriage. They made a life together, and as their family grew they were faced with questions familiar to many families concerning educational and economic opportunities dependent upon relocation. They moved first to Ohio for the schools, and as the children grew older and more independent, they moved to Washington D.C. ¹⁶

It was there that their oldest son, William, would settle, marry, and raise his family. He had been a schoolteacher and a principal in Paducah, Kentucky, and was encouraged by a friend to try his hand at the law. D.C. seemed to present myriad opportunities for employment, particularly within the government, and William Houston secured such a job. He soon met Mary Hamilton, who would become his wife. Her grandmother had been a slave whose freedom was purchased by Jesse Hamilton, but the unrest caused by the Dread Scott decision precipitated their move to Ohio. After the Civil War, their son Amaziah married, and his wife bore a

daughter, Mary, who would be the oldest of ten children. She eventually attended Wilberforce College, and met William while in Paducah, where she was teaching.\textsuperscript{17}

Mary agreed to marry William in 1891, in the District of Columbia, where he began attending Howard University law classes to secure a career that would enable him to better provide for a family. Over time he began to practice law, and Mary took a job as a hairdresser because it paid more than teaching. On September 3\textsuperscript{rd}, 1895, their first and only child, Charles Hamilton Houston, was born at home at the family home in Washington D.C.\textsuperscript{18} Mary wanted to make sure that her son would have all of the advantages possible, and both parents worked diligently toward that end, providing a nurturing and protected home for their son. The harsh realities of segregation did not impact Charles Hamilton Houston in those early years; that would come later. As the Houston’s prepared to make their life in Washington D.C. with their newly born son, they were part of a larger national debate among African Americans that were interested in reversing efforts to implement de jure segregation. Those efforts crystallized in Louisiana, culminating in a Supreme Court decision that would take more than a half-century to repair. To rightly understand the boisterous road taken to undo segregation, we must first visit New Orleans, with its rich racial history to understand the legal context in which African Americans labored, and fought for their full measure of human rights in the United States.

\textsuperscript{17} Ibid., 22-23.
\textsuperscript{18} Ibid., 24.
Louisiana, with its complex political history, reaches back to the entangled colonial aspirations of Europe’s powers dating back to the sixteenth century. With its remarkable geography, including gulf ports, a legendary river system, steamy bayous, and the almost mystical moss draped Cyprus trees, Louisiana’s soul is in the city of New Orleans. Those who settled in the area were lured by the possibilities of vast riches, some rumored and some real, propelled by the mercantile impulse that guided colonial policies of the time. Louisiana served as a crossroads for a broad swath of humanity which settled in its unique city, built below sea level at the end of the Mississippi approximately one hundred miles from the Gulf of Mexico. It included Native Americans, Africans, free and slave, Haitians, Spaniards, French, Creole, British, and the kaleidoscope of combinations made possible by time, proximity, and human inclination. As it emerged from the strains of reconstruction, the city of New Orleans provided the distinctive setting and circumstances that would unhinge any egalitarian impulses left after reconstruction. With the rise to power of the Democratic “Redeemers,” the mundane act of traveling from one city to another would thrust Homer Plessy headlong into a transformative Supreme Court case, legitimizing de jure segregation for the next sixty years.

The facts surrounding the arrest of Homer Plessy are fairly well known, and have often been retold. On June 7, 1892 Homer Plessey, who was 1/8th black, purchased a first class ticket to travel from New Orleans to Covington, approximately
thirty miles outside the city limits. When he attempted to be seated in the first class car he was confronted by the conductor who instructed him to move to the colored car which he refused to do.\textsuperscript{19} He was then promptly arrested leading to appeals on both sides as the case moved its way to the Supreme Court of the United States. These simple facts overlook what Blair Kelley has pointed out, that “the broader social circumstances from which Plessy emerged” are too often ignored.\textsuperscript{20} By further explicating the nuanced condition of race in Louisiana, New Orleans in particular, a richer understanding of how contested race and identity were to the affected parties can be achieved.

Against the background of the post-reconstruction amendments undoing slavery, providing for equal protection, and the granting of black male suffrage (among other rights), African Americans faced a concerted effort on the part of whites to render those gains null and void. Those efforts crystallized in the Supreme Court decision \textit{Plessy v. Ferguson}, which would earn for the 1890’s the deserved attribution by Rayford W. Logan as the nadir of race relations.\textsuperscript{21} However, segregating America based on race did not just happen, an anachronistic oddity plaguing the circumstance of race in America for nearly sixty years. In fact it emerged in the vibrant contestations and debates among workers, intellectuals, and the political classes, of all races, over the kind of industrial democracy the U.S. would

become. Understanding how *Plessy* emerged and its reception by the public at large in 1896 begins with an exploration of the socio-cultural, political and legal milieu of New Orleans at the end of the nineteenth century.

Louisiana in the 1890’s would prove to be fertile ground for the continuation of the debate over race and its place in society among those who still held out hope for the promises of reconstruction, as well as those who were actively striving to avoid that eventually through legal or extralegal means. The city of New Orleans presented a unique circumstance given its history, geography, and politics, which combined to inform the debate on race as it related to the matter of segregation and public accommodations. Jim Crow cars first appeared in Florida in 1887, and the practice spread as those in the white power structure boldly moved to undermine the gains that had been attained during Reconstruction. Moreover, the extent to which Jim Crow laws would inhibit the freedoms of black citizens, North and South, was furthered by fading empathy for the ideals of Reconstruction and the rise of the “redeemers.” Interestingly, what would begin as a localized, biracial effort to confront segregation, ended with the sanctioning of the democratically repugnant notion of “separate but equal” by the nation’s highest court. The immediate question for Louisianans in 1890’s, both black and white, was what, if anything could they do about it?

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Under Reconstruction, Louisiana was able to pass laws that fully recognized its heterogeneity and dashed the hopes of radical republicans of the day. For example, within a year of the ratification of the Fourteenth Amendment in 1869, the "state passed a law forbidding public carriers to segregate its passengers." The "Equal Accommodation Act" stated in part that "common carriers...make no accommodations on account of color," Endorsed earlier by Article 13 of Louisiana’s Constitution, it declared that,

‘All persons shall enjoy equal rights and privileges upon any conveyance of a public character; and all places of business or public resort, or for which a license is required by either State, parish or municipal authority, shall be deemed of a public character, and shall be open to the accommodation and patronage of all persons without distinction or discrimination on account of race or color.'

Those passengers in fact represented a heterogeneity fully expressed in their rich mix of Spanish, French, African, European and Haitian ancestries. Segregation did not make sense to many Creoles, due to the dynamics of race that existed, "especially since it classified many white-skinned people as ‘Negro.'" That is why, when the Separate Car Law (Act No. III) passed in 1890 it was met with immediate disdain, and revealed not only resentments within the greater black/white divide, but also the

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24 Kluger, Simple Justice, 72.
26 Ibid., 128.
27 Lau, From Grassroots to the Supreme Court, 19.
divisions of race, ethnicity and class that existed within the city of New Orleans. For instance, Afro-Creoles advocated for total integration in society and its institutions, while blacks cultivated independent black churches and schools. This tension would eventually lead to a fracturing among people of color within New Orleans, as “an elite group of Creoles of Color came together,” remonstrating for a legitimate challenge to the law.\(^{28}\)

The challenge proved true the old adage that politics does make for strange bedfellows, as the white ownership of the East Louisiana Railroad sided with the newly-formed Citizens Committee for the Annulment of Act No. III, led by Afro-Creole legislator Aristide Marie, with a strategy to use the courts and the 14\(^{th}\) Amendment to take the law down.\(^{29}\) The law stipulated that there would be two first class cars, and the railroads would be responsible for determining which passengers were white and which black. The owners sided with the Citizens Committee out of economic self interest, but nonetheless added significantly to the partnership as they challenged the law. For the railroad’s part, the law opened them up unnecessarily to increased costs (two cars instead of one) and a liability to lawsuits due to the potential to misidentify passengers.\(^{30}\) As one observer noted, “if you were not informed you would be sure to pick out the white for colored and the colored for white.”\(^{31}\)

It was also plain, as Akhil Amar has written, that “it’s (the law) whole point was to privilege whites and degrade blacks, in direct defiance of the 14\(^{th}\)

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\(^{28}\) Ibid., 29-32.
\(^{29}\) Ibid., 33-35.
\(^{30}\) Ibid., 35.
\(^{31}\) Ibid.,
Amendment's promise of equal citizenship.\textsuperscript{32} But citizenship itself was not such a clear cut proposition to many in power during the nineteenth century. In the antebellum period citizenship largely emanated from the state in which one was born and resided, a Kentuckian, Virginian, or Louisianan, etc. Then there were those immigrants who were naturalized and granted citizenship by the federal government, which also included those in the federal territories.\textsuperscript{33}

Debates over race and identity were nothing new to Louisiana. It must be remembered that it was the Louisiana Purchase at the beginning of the nineteenth century that first raised the issue of citizenship not directly addressed by the Constitution. The question surrounded the issue of designation for those persons in the lands purchased. Would they become instant citizens? While there were provisions in the Constitution for naturalization, and for territories to be admitted to the union, there was no such consideration for the status of residents of land that was bought. Would the Spanish, French, Indian, Blacks, both free and enslaved, become immediate citizens?

Congress manufactured an answer that satisfied all by ignoring the reality, and simply turned Louisiana into a territory under federal authority. As territories applied for statehood, those individuals defined as citizens by the fledgling state would, true to antebellum custom, be granted citizenship emanating from the state. So, while the beginning of the nineteenth century found the nation embroiled in a citizenship crisis that enveloped Louisiana coming to an acceptable racial end only


\textsuperscript{33} Ibid., 381.
through an act of legislative fiat, so too, did the century end. This time, however, the crisis would be promulgated by another branch of government, the Supreme Court of the United States.

The decision to challenge the Separate Car Act was far from unanimous, and was hotly contested both within the community of color and without. These “broader social circumstances from which Plessy emerged have been less well probed” and deserve an airing in order to appropriately frame the questions of the day. Should, for example, a case be brought to directly challenge the “equal but separate” portion of the act, as it was then known, or should a more accommodating posture be assumed in light of the then-current case law and cultural, political and economic dispositions of those in Louisiana and the United States as a whole? Finally, if a case were brought, should it be a concerted effort on the part of the offended communities or should it be left to individuals to bring action to the courts?

The Courts Prior To Plessy

As the era of Reconstruction ended, the Supreme Court of the United States found itself in the midst of a nation adapting to massive changes. As Samuel P. Hays mentions in his book, *The Response to Industrialism: 1885-1914*, aggrieved parties in the U.S. regularly used the courts to address wrongs, rather than the legislative and

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34 Lau, *From the Grassroots to the Supreme Court*, 19.
executive institutions of the state and federal governments.\textsuperscript{35} This would change as the nation moved away from “judge-made” law to “statute law,” and as the modern American state transformed at the end of the nineteenth century and into the twentieth. For African Americans though, the courts would remain a platform from which to redress the issue of rights that had been abridged. While the majority turned to local, state, and federal governments to legislate new laws, those avenues were largely closed to blacks, leaving the courts as the only viable source for justice, such as it was.

A few of the early, formative cases that called the Supreme Court’s attention to the Fourteenth Amendment are noteworthy for the reason that they demonstrate the interpretive approach of the court. It was not inclined to read broadly the intent of the Reconstruction Congresses that authored the amendment; instead it would rely on a very narrow reading, at times standing the Fourteenth Amendment on its head. There was a question among the jurists concerning whether it (the Fourteenth Amendment) “was limited to state actions against freedmen (like the black codes) or if it was meant to apply to individuals who acted with the covert consent of former Confederate state leaders as well as to the states themselves.”\textsuperscript{36}

In the \textit{Slaughterhouse Cases}, the justices were faced with a state granted monopoly that permitted a single company to claim all the meat-packing business in New Orleans. Louisiana awarded the twenty-five year contract, citing the state’s


responsibility to protect the health of its citizens. Butchers felt this was an unlawful deprivation of their right to work, depriving them of their livelihoods, and they sued under the 14th amendment’s protections. The court ruled in the narrowest fashion, declaring that the intent of the amendment was to protect ex-slaves, which these men were clearly not. Additionally, and more disturbingly, the court recognized both state citizenship and national citizenship, while the 14th Amendment only protected those rights attributed to national citizenship. In a 5-4 decision, the justices ruled that the butchers had no claim of harm as national citizens, and the state of Louisiana was within its rights to protect its people in this fashion.

Another alarming case *Munn v. Illinois*, resulted in a decision allowing Illinois to regulate private property for public use, and in *Santa Clara v. Southern Pacific* personhood was granted to corporations. *Munn v. Illinois* legitimated the state’s ability to set maximum charges for the storage of grain in warehouses. The act did not constitute a violation of plaintiff’s life, liberty, or property without due process, because according to the justices, the state has a right to exercise its police powers, and the property of the butchers constituted a public interest and could be regulated as such. Furthermore, in a still confounding decision, the justices in *Santa Clara County v. Southern Pacific* (1886) decided a case that originally turned on whether Santa Clara, California could count the fences alongside the railroad tracks as assets, and therefore taxable. Southern Pacific countered that they were entitled to deduct

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37 Slaughterhouse Cases, 83 U.S. 36 (1873).
the cost of the mortgage just as any person in California was.\textsuperscript{40} The Supreme Court decided in Southern Pacific’s favor, granting that its 14\textsuperscript{th} Amendment rights had in fact been violated. It is ironic that the Supreme Court of the United States saw fit to grant personhood to a corporation, thereby protecting it from state action, but actual persons could not expect the same consideration. These decisions severely weakened, if not extinguished altogether, the original intent of the 14\textsuperscript{th} Amendment.

Two other cases that dealt directly with civil rights and would have a bearing on future action against the state of Louisiana were \textit{Hall v. DeCuir} (1878) and the \textit{Civil Rights Cases} (1883). The \textit{Hall} case dismantled the Equal Accommodations Act of 1869, which forbade the segregation of passengers on carriers within Louisiana. Enforcement of law was restricted to travel within that state, and the court ruled that a passenger entering the state might still be forced to ride in an integrated car. It also federalized the doctrine of “reasonableness” regarding the notion of separate but equal, allowing states to legally rationalize the legitimacy of segregating whites and blacks.\textsuperscript{41} Also devastating was the Supreme Court’s overturning of the 1875 Civil Rights Act for “exceeding Congress’s enforcement authority under the 13\textsuperscript{th} and 14\textsuperscript{th} Amendments.”\textsuperscript{42} Congress, it adjudged, had no right to interfere with private acts, declaring that if a restaurateur wanted to segregate diners in his establishment that was his private right. The amendments only protected against state action, and were therefore not applicable. Taken together, these cases stirred the vigorous debate over

\textsuperscript{40} Santa Clara v. Southern Pacific Railroad Co., 118 U.S. 394 (1886).
\textsuperscript{41} Lofgren, \textit{The Plessy Case}, 129-130.
\textsuperscript{42} Ibid., 132.
separate facilities, equal rights, whether social rights were the same as civil rights, and how best to proceed with untangling the frayed threads of logic.

Political and Social Considerations

There was a very real dispute between those in the Creole community, who favored a direct engagement in the courts, and those in the African American community, who were willing to accommodate social segregation if civil rights were protected.\textsuperscript{43} This disagreement would play out in the fracturing of the American Citizens’ Equal Rights Association (ACERA) which was founded by Creoles of color in 1891 to address the increasing number of segregation laws.\textsuperscript{44} Afro-Creoles and African Americans argued over this issue, with Afro-Creoles asserting the need for total institutional integration, while African Americans were inclined to nurture their own black schools and churches separately.\textsuperscript{45} After the split, an influential group of Creoles of Color, led by Aristide Marie, a long-time agitator for equality, emerged and sought a fitting case with which to challenge Jim Crow.\textsuperscript{46}

While Aristide Marie and his group waited for just the right case, the political winds were shifting unfavorably. Two unpropitious outcomes regarding the passage of bills written in the spirit of the Reconstruction congresses were harbingers of


\textsuperscript{45} Lau, \textit{From the Grassroots to the Supreme Court}, 29-32.

\textsuperscript{46} Ibid.,
future legislative dispositions regarding race. The Blair Bill, authored by Senator Henry Blair of New Hampshire, provided federal monies (starting with $15,000,000.00) for education, to be disbursed to the states in an attempt to shore up the woefully half-hearted efforts of many southern states to fund their schools with a modicum of equality. “Segregation of the races was permitted, but no inequality in the benefits derived from the bill.”  

Additionally, the Lodge Bill (Force Bill), offered by Henry Cabot Lodge in the House of Representatives, was designed to protect Blacks who wanted to exercise their right to vote in federal elections, free from intimidation. These bills were viewed by many in the south as a direct threat to state sovereignty, but they were equally viewed as a threat to the Democratic Party’s dominance in the region.

Both bills were defeated over the course of a long debate that exposed the range of intellectual currents competing for influence. Some, like J.L.M. Curry of Alabama, thought the education bill’s defeat had more to do with southern “race-prejudice...and fear that the education of the negroes would make them less easily manipulated in elections had more influence in the adverse action than constitutional scruples.”  With the publication of Darwin’s *Origin of the Species*, there was a melding of science and racism that lent a legitimizing credibility to the belief in the intellectual inferiority of Blacks. As noted paleontologist and geologist Stephen J. Gould has written, “in a sense, their union [numbers and science] forged the first

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powerful theory of ‘scientific racism.’” The new leadership that emerged after the withdrawal of federal troops in the South embraced the legal implications of Social Darwinism as a justification for the narrowing of rights for freedmen and freedwomen.

In turn, the evolutionary racism was embraced by the “redeemers” who, as C. Vann Woodward in the *Origins of the New South 1877 – 1913* explained, would most influence politics and economics in the south. Also objecting to the “Force Bill,” although on different grounds, was W.E.B. Du Bois, who in 1891 declared, “When you have the right sort of black voters you will need no election laws. The battle of my people must be a moral one, not a legal or physical one.” Du Bois was addressing the necessity of such a law. To his way of thinking the law was not morally needed because the 15th Amendment already spoke quite clearly to the issue of voting. With the torrent of debate and varying opinions regarding the place of race within the law, it is little wonder that finding the right case to challenge the precedent of equal but separate (as it was referred to then) was desperately difficult.

Given the climate and the status of the law, the search for the right case with which to challenge the Separate Car Act was taken up by the “Citizens Committee for the Annulment of Act III,” a group formed to stop the continuation of segregation. The group had, as can be imagined, a number of viable incidents from which to choose, however the group ultimately selected the case of Homer A. Plessy, an Afro-

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Creole from a working-class background in New Orleans, to challenge the law. He was one-eighth African American, so light skinned that he appeared white, but according to the legal definition of the time was identified as black. Plessy was of good moral character, known in the community, and willing to take part in the arranged encounter with the East Louisiana Railroad. With the complicity of the railroad, which was not eager to provide extra cars at its expense, he bought a ticket on June 7, 1892 from New Orleans to Covington. At the end of this trip of approximately thirty miles, he was removed from the train and arrested for violating the Separate Car Act.

His attorney, Albion Tourgee from North Carolina, was nationally renowned and known variously as a carpetbagger, or a lawyer, judge, an activist for equality, and more famously as a novelist. Tourgee also founded the National Citizens Rights Association (NCRA), believed by his biographer, Mark Elliott, to have foreshadowed the National Association for the Advancement of Colored People, because he believed that it was necessary to have an interracial organization to carry the ideal of a “color-blind-society.” Tourgee’s life was a “model of dissent” as he risked his livelihood and reputation authoring the nation’s first comprehensive anti-lynching law and agreed to take on the state of Louisiana in what would be a formidable task.  

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53 Lau, From the Grassroots to the Supreme Court, 114.
54 Elliott, Color-Blind Justice, 1.
Homer Plessy posted bond and was released to await the legal proceedings arranged by Ablion Tourgee in front of the "Honorable John H. Ferguson, judge of the parish of Orleans." The crux of the argument was the act's violation of the 13th and 14th Amendments to the Constitution of the United States, particularly the law's inconsistencies regarding "a right, privilege, or immunity claimed under the Constitution." Homer Plessey and his team lost in the lower court and were heard in the State Supreme Court, where they were again defeated. At the end of February, 1893, they received a writ of error and were granted certiorari. It would take until April 13th, 1896 for oral arguments to commence due to the customs of the court, which granted the justices the right to prioritize cases, giving precedence to those which were criminal and also allowing for a degree of lobbying on the part of other litigants.

While Tourgee awaited his date with the Supreme Court there was a cultural debate over the identity, or lack thereof, of a truly American music. African Americans living in the nadir of race relations were not idle, waiting for time itself to improve their lot. Instead, they were instrumental to making advances along that challenged and broadened American culture. Artistry in the United States presented an opportunity for blacks, before jazz, to permanently define an intrinsically

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55 Plessy v. Ferguson, 163 U.S. 537 (1896) 538.
57 Ibid., 149-151.
American music. Literature in the United States had firmly established itself by the 1890’s, but the absence of a musical identity presented a bit of a dilemma. As the nation emerged industrially with the nascent ability to project its power, at least regionally, it stood to reason that it, like all powers, had a mature culture. The debate was over how to create a uniquely American music that represented the country as a cultural whole. What would that music sound like? What traditions or themes would be included? Would race figure at all in the creation?

A New World

As patrons filed passed the Italianate façade of Andrew Carnegie’s Music Hall on December 16, 1893, they eagerly anticipated the opening night of Antonin Dvorak’s “From the New World.” Dvorak, a gifted romantic composer rivaling Brahms or Tchaikovsky, was to premier a composition reflecting a uniquely American style of music. Dvorak was lured away from his native Bohemia to lead the National Conservatory, an institute for talented and aspiring African American musicians, created by Mrs. Jeannette Thurber in New York City. New Yorkers that night would be listening to a new “American” music, created to capture the essence of the United States and effectively end the practice of imitating the European style. The night was an unqualified success.

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The success of “From the New World” was due not only to Dvorak’s obvious abilities, but also the fact that he had created a composition that reflected America as it simultaneously moved and inspired. To create the symphony, Dvorak had immersed himself in the music of this young country, and while impressed by much of it, he was particularly taken with the “spirit of the negro spirituals.” Few patrons that night recognized the powerful influence of Harry Thackery Burleigh upon the composition of that night’s performance. Burleigh, an outstanding African American baritone, was introduced to Dvorak by one of his students at the conservatory, and captivated his interest with his performance of Negro spirituals. Burleigh was invited to Dvorak’s home on many occasions to sing and be interviewed about the spirituals which so impressed him.

As Burleigh later related, “Through all of these songs, there breathes a hope, a faith in the ultimate justice of man. The cadences of sorrow invariably turn to joy, and the message is ever manifest that eventually deliverance from all that hinders and oppresses the soul will come and man – every man – will be free.” Dvorak’s aspiration to those same lofty ideals was reflected in his effort to use the heterogeneity inherent in the United States to create a musical style that would move the country forward as a whole. Over time, he declared “we Americans will

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61 Ibid.
62 Harry T. Burleigh, The Spirituals of Harry T. Burleigh: Low Voice (California: Alfred Publishing Company, 1917), 4. The exact phrasing appears in W.E.B. Du Bois’ The Souls of Black Folks, written earlier than Burleigh’s pronouncement, in which he states, “Through all of the sorrow songs there breathes a hope—a faith in the ultimate justice of things. The minor cadences of despair change often to triumph and clam confidence. Sometimes it is faith in life, sometimes a faith in death, sometimes assurance of boundless justice in fair world beyond.” It’s difficult to tell if it was a conscious or unconscious borrowing of material on Burleigh’s part but it is an apt sentiment nonetheless regarding spirituals.
eventually absorb the Negro and Indian music and voice our national characteristics through it,” thus demonstrating an understanding of humanity and race desperately absent in the America of the 1890’s.\(^63\)

The degree to which Burleigh’s influence can be detected in Dvorak’s work is evidenced in the reviewer’s comments on the presence of spirituals in the work itself, in which he avers, “The subdued murmur of the muted strings accompanies a marvelously pathetic melody uttered of the English horn. The melody is original but it has the pathetic spirit and some of the characteristic sequences of negro music.”\(^64\) H.C. Colles, who had the opportunity to speak with Burleigh, speculated that Dvorak used English horns because they reminded him of Burleigh’s baritone voice.\(^65\) In other segments there is melodic evidence of Burleigh’s favorite song, “Steal Away,” and four measures that are nearly identical to those found in “Swing Low, Sweet Chariot.”\(^66\)

Dvorak left New York after the depression of 1893 took hold, and the money ran out. Burleigh himself became better known, and began singing in several popular New York establishments, as well as at the Columbian Exposition. In 1894 he auditioned, concealed behind a screen, along with fifty-nine white men, and was selected to become a member of the all-white St. George’s Church. When the members of the church discovered that he was a black man there was a good deal of opposition, but with the support of the pastor and J. Pierpont Morgan he remained a

\(^{64}\) “Dvorak’s Latest Work,” The New York Times, December 16, 1893
\(^{66}\) Ibid., 175-177.
member for the next fifty-two years. Burleigh’s association with Dvorak would not survive as long his relationship with St. George’s, instead it fell victim to the vagaries of the depression. When funding for the conservatory fell short, Dvorak was forced to return to Bohemia while Burleigh went on to a successful career of his own, traveling for a time with Booker T. Washington to raise money for causes within the African American community.67

Unfortunately, the 1890’s did not live up to the aspirations of “From the New World” that Dvorak had envisioned; neither did his attempt to encourage interaction between the races for the betterment of the larger American society succeed. Instead, his charge of creating an “American” music, representing the best of the whole, was thrust headlong into an America that became in the 1890’s a disputed landscape.

Perhaps it was fittingly ironic then, that in the beginning of the 1890’s a symphony insightful for its inclusiveness led to the creation of “From the New World,” a piece in many ways illustrative of the era. “From the New World” is representative of the discordant realities of the United States; it is by turns hopeful, inspiring, and moving, while at times the listener is touched by a palpable sadness. The idea of faith in the ultimate justice and brotherhood of man that Burleigh communicated through the songs he loved (the Sorrow Songs) would move African Americans to fight against the type of de jure segregation that Plessy threatened. The question of how best to achieve an America absent its illiberal laws and attitudes was actively undertaken by those in the intellectual community.

According to August Meier, in his classic study, *Negro Protest Thoughts in the Twentieth Century*, there was a vicious dispute began in the 1890’s among the leaders of the black community and lasted until 1915. The elite within this society were vibrant, and varied from the race men, who were single-minded in their dedication to ending all forms of inequality, to the new generation, who at times found themselves voicing discordant views as to the best way to address inequality. At the beginning of the decade, elder statesman Frederick Douglass insisted on the complete integration of blacks on equal terms with whites in America. Booker T. Washington, on the other hand, offered a gradualist approach that proffered economic independence via adherence to a technological independence eschewing academic training. After Douglass’ death, W.E.B. DuBois emerged as an antagonist to Booker T. Washington’s vision, offering instead political equality, opposing Jim Crow, and espousing academic as well as other types of training. Understanding the vibrancy and influence of the debate at the end of the nineteenth century is key to framing the expectations of African Americans as they confronted Jim Crow and the realities of Plessy.

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69 Ibid, xix.
Frederick Douglass arrived home after attending a meeting on women’s suffrage on February 20th, 1895. At the age of seventy-seven, he had regained the fire and voice some had feared lost, impressing his audiences with the dignity and honesty of a movement that had long esteemed his leadership. That evening, after serving her husband a quick dinner before he was to head out again, Helen Pitts Douglass was “horrified” to watch as her husband stood to recount a story, and fell to the floor, but did not rise. At mid-decade, the “lion of freedom” had been fighting for a range of issues relevant to the daily lives of blacks, including working conditions, the franchise, and separatism as expressed by either black nationalists or advocates of colonization. His views were not uncontested, and in fact represented a lifetime’s growth and wisdom.

Historian James Oakes has elegantly demonstrated Frederick Douglass’ transformation from a radical “Garrisonist,” who viewed the constitution as too corrupted by slavery to save, to a reformer willing to step into the political arena for equal rights. He spent the majority of his career as a reformer eschewing the “Garrisonist” approach, which left itself outside the political spectrum, and instead argued for a patriot critique. This critique maintained that America had failed to live up to the promises laid out in the founding documents, and that the country should and must fulfill them. To that end, there could be no bowing to the inequalities that existed in the United States, and in the last years of his life Douglass asserted a vision.
of the country that was at once clear and unnerving to many who debated the role and place of race at the end of the nineteenth century.

On race and equality Douglass was quite clear, “God almighty made but one race. I conceive...that there is no division of races. I adopt the theory that in time the varieties of races will be blended into one. Let us look back when the black and white people were distinct in this country. In two hundred and fifty years there has grown up a million of intermediate. And this will continue.”73 Frederick Douglass considered himself a member of a single human race, a philosophy that informed his actions throughout his life.74 It is understandable that he would express his anger at the framing of issues associated with African Americans as a “negro problem.” Also upsetting to him was the participation of the “colored press of the country and some of the colored orators of the country that insisted on calling it a ‘negro problem’ or a race problem.”75

For Douglass the “race problem” was a substantial point of contention within the black community that demanded the same vigor and intellectual ferocity that he had demonstrated as a younger man against the bonds of slavery. To allow the debate over the rights of blacks in America was to establish a nomenclature that distinguished blacks categorically outside the common political discourse inclusive of all people.76 His concern spoke to a fundamental philosophical divergence with

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74 John W., Blessingame, and John R. McGivigan, eds. The Frederick Douglass Papers. Vol. 5., 147.
75 Ibid., 602.
76 Ibid.
order to achieve gains further down the road. As Douglass made abundantly clear in a speech entitled “The So Called, but Mis-Called, Negro Problem,” delivered at an AME church in 1894, eight million people were denied the “commonest rights of humanity, and regarded by the ruling class in that section, as outside the government, outside of the law, and outside of society; having nothing in common with the people with whom they live.” This led directly to the type of disgraceful abuses that threatened the “peace and security” of the entire United States.\textsuperscript{77} It is also connected to the worst abuses suffered in the black community, to the denial of the right to vote from lynching.\textsuperscript{78}

The reformer in search of equality rejected out of hand the perception that controversies surrounding the tenant system used in agriculture, or the restrictions on the franchise, or indeed, even suggestions on the part of some that Negroes be colonized, accounted for a so-called “negro problem.” Frederick Douglass understood and argued forcefully for the need for reforms in these areas, and attempted to demonstrate to those in power the absolute injustices inherent in the everyday struggles of blacks. The tenant system robbed from the farmer in three ways; first by establishing expensive rents for which the farmer would often be forced to mortgage his crop before it was even planted, second by controlling and manipulating the books to the landlord’s advantage, with no manner of appeal available to the farmer, and finally, rather than monetary compensation, farmers were

\textsuperscript{77} Daniel P. Murray Collection, (Library of Congress Memory Project), 4, memory.loc.gov/ammem/aap/aaphome.html
\textsuperscript{78} Ibid. 7
paid in kind “with orders on stores instead of lawful money.” Keeping the tenant farmer cash-poor enabled white landlords to perpetuate a vicious and exploitative system, effectively shackling them to the land. Tenant farmers simply could not afford to move, and were relegated to a never-ending cycle of debt. Douglass pointed out that it was illegal in other countries, like England for example, to pay laborers in anything other than “lawful money,” insisting that such should be the practice in every state here.  

In a democracy, the right to vote is essential in order for a government to legitimately claim that its people are heard, and able to participate fully by electing the people who allow them to reap the rewards of that society. The impotence to elect the judges who decide the civil and criminal cases so important to local communities, not to mention the governors and administrations that direct the agendas of the state or nation, is absurd, and was “chilling the cause of liberty,” according to Douglass. He worried that the Supreme Court had surrendered to the interests of state sovereignty, as a result lamented the implications. “It (the Supreme Court) has destroyed the Civil Rights Bill, and converted the Republican Party into a party of money rather than a party of morals, a party of things rather than a party of humanity and justice. We may well ask what next?”

At mid-decade the issue of “what next” for some in the United States in both the black and white communities, in and out of government, included the idea of

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79 Blessingame, and McGivigan, eds. The Frederick Douglass Papers, 600-601.
80 Ibid., p. 601
81 Ibid., 596.
82 Ibid.
colonization. The notion included plans to colonize within the territorial United States and Africa, and both possibilities were seen as non-starters for Douglass. Regarding proponents of colonizing he observed that, "My opinion of them is that if they are sensible, they are insincere, and if they are sincere they are not sensible." He could not rationalize how anyone, anywhere could be respected abroad if he was not respected in his own country. "All this Native land talk is nonsense. The Native land of the American Negro is America. His bones, his muscles, his sinews, are all American. His ancestors for two hundred and seventy years have lived, and labored, and died on American soil, and millions of his posterity have inherited Caucasian blood." Douglass considered those who would separate the American Negro from his country to be actively working against their "moral progress." Most importantly, to fix the problem of race in America the country need simply follow the law of the land and require that parties "live up to the noble declarations we find in their platforms." Douglass' sentiments were echoed by Senator John J. Ingalls, who said "Let the nation try justice and the problem will be solved."

Of course not everyone saw eye to eye with Frederick Douglass, and by mid-decade there were other voices challenging the still powerful leader. To demand equality amid the political realities that existed at the end of the nineteenth century seemed to many to be unproductive. Although most would agree that the end result to which Douglass aspired was just and desirable, the means to that end were very

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83 Ibid., 597.
84 Ibid., 598.
85 Ibid., 604.
86 Ibid., 604-605.
much contested. In 1882 a young black entrepreneur and former slave founded the Tuskegee Institute as a means to provide industrial education for African Americans. It was this type of education that would better serve the community, allowing it to rise up and flourish without waiting for the collective political will of whites to mature. With Frederick Douglass’ death in February of 1895, Booker T. Washington and his machine were positioned to offer another vision, one of accommodation rather than reform. Or was it?

The death of Fredrick Douglass in February of 1895, the same year Washington delivered his famed Atlanta speech proclaiming that blacks and whites could live “separate as the fingers” regarding social interaction yet “one as the hand in all things essential to mutual progress,” ushered in a conservative era of black leadership. ⁸⁷ The transition from Douglass to Washington was not a given, but largely the result of fortuitous timing thanks to a confluence of ability, opportunity, and political receptivity on the part of the white elite. There were other leaders within the black intellectual community, but it was Booker T. Washington’s speech on September 18, 1895, at the Atlanta conference of the Cotton States and International Exposition that propelled him to the forefront. It also framed an active debate that identified Washington alternately as a realist or a reactionary. ⁸⁸

The speech itself revealed little in Washington’s philosophy that was new. He had given similar speeches emphasizing self-help, self-reliance, and the eschewing of

⁸⁸ Ibid., 82.
political solutions, emphasizing instead the creation of individual wealth. That
wealth would then demonstrate that blacks were capable of success independent of
the political realities, and would, by that very success, force whites to address their
political demands. This message found a receptive audience in the south, where
whites were tired of being blamed for the oppression of southern blacks, as well as in
the north, where whites had lost interest in the political struggles taken up by the
reconstruction congress. It was amid this current that Booker T. Washington was
accepted as an opening day speaker at the Cotton Exposition. But that was not to be
the end of controversy.89

Many in the African American community were upset with the choice of
Washington for exactly the reasons that many whites were happy with it. An
immediate debate erupted over whether or not Booker T. Washington and other
blacks should share the same building. Ultimately it was decided that there would be
a separate building for blacks participating in the exposition, constructed at their own
cost. This, together with the fact that attendees would have to ride in Jim Crow cars,
was viewed by many as a slight that ought not to have been tolerated. The failure to
recognize the economic and political inequalities that necessarily limited the
opportunities of African American farmers was the figurative equivalent to sticking
their heads in the political sand. Nonetheless, the building went up as a fine example
of craftsmanship, and Washington took the stage to an electric reception. Washington
raised his hand in the air to demonstrate his metaphor of “separateness” and

“togetherness” to wild applause, tears were shed as the white governor of Georgia moved across the stage to shake his hand.\textsuperscript{90}

After the speech, he was able to secure funding from white philanthropists like Andrew Carnegie, who opened their purse strings wide enough to create both the image and reality that Booker T. Washington was now the most visible and well-funded black intellectual. From his position at the Tuskegee Institute he continued his work with the Annual Negro Congress, which by 1895 was drawing 2,000 participants from across the country and aiding farmers in new technologies and networking.\textsuperscript{91} He also persisted in driving home the importance of financial freedom. “It is all very well and good,” he said, “to bewail our wrongs I feel them as keenly as anyone else. But I think we have had quite enough talk about them, and the thing to do now is to try to get our rights.”\textsuperscript{92} By “get our rights,” Washington was indicating the pursuit of the kind of self-reliance that lay outside the political realm. “The prejudice against us negroes is not on account of our color, but because of the badge of slavery – the slavery we used to be in and the industrial slavery we are now in.”\textsuperscript{93} Washington found it impossible to separate the vote from economic independence, because those individuals who controlled economic freedom controlled the bonds of slavery, even if some measure of political freedom existed.\textsuperscript{94}

\textsuperscript{90} Ibid.
\textsuperscript{91} William, H. Harris, \textit{The Harder We Run: Black Workers Since The Civil War}, (Oxford University Press, New York, 1982), 32.
\textsuperscript{93} Ibid., 399.
\textsuperscript{94} Ibid
Neither the loathsome tenant system in agriculture, nor the racist practices of manufacturers gave pause to Washington in his public declarations. To answer the disparity of the tenant system, he could point to an ex-slave who, working by the light of the moon, harnessed himself to the plow and was able to earn enough money to buy stock in the Tuskegee Bank.\textsuperscript{95} Regarding the question of unions and black labor, Washington advised against joining, suggesting instead that they “ingratiate themselves with employers by proving themselves more loyal and productive than militant, strike-prone white unionists.”\textsuperscript{96} While he cautioned against unions, history clearly demonstrate that many blacks did organize and protest against unfair labor practices, in some instances with their white union brothers.\textsuperscript{97}

These positions did not sit well with everyone, as he appeared to be giving sanctioning the legitimacy of “separate but equal,” even as the case sat with the Supreme Court awaiting a final ruling. As the decade came to a close, there had clearly been a passing of the intellectual torch, but that did not mean there were not challenges to the vision Booker T. Washington proposed. Quite the opposite in fact, for while in 1895 a young W.E.B. Du Bois had agreed with Washington, later, in \textit{The Souls of Black Folk}, he would render a stinging indictment of the Tuskegee philosophy in general, and Booker T. Washington, in particular.

The Niagara Movement, initiated in 1905, signaled an official split between the “Tuskegee philosophy” and W.E.B. Du Bois, who was Washington’s most vocal

\textsuperscript{95} Ibid., 400-401.
\textsuperscript{96} Zieger, \textit{For Jobs and Freedom}, 28
\textsuperscript{97} Ibid., 30.
critic. By the close of the 1800’s, Du Bois had established himself as an intellectual force with the publications of *The Suppression of the African Slave Trade* (1896), and *The Philadelphia Negro* (1899). In the *Souls of Black Folk* he famously used the metaphor of the veil to great effect, elegantly and powerfully illuminating the separateness that blacks in the United States experienced. Du Bois also uses culture in the *Sorrow Songs*, to powerfully demonstrate the uniquely African American experience. Songs such as *The Coming of John, Swing lo, Sweet Chariot, Roll Jordan Roll, and Steal Away*, he explains, spoke to feelings of “exile, death, the liberation of waters, and ‘The Faith of the Fathers.”98 Too, Du Bois uses the book as an opportunity to air his intellectual displeasure with the then-recognized leader of blacks, North and South.

Du Bois gives voice to his argument in the chapter *Of Mr. Booker T. Washington and Others*, contained in *The Souls of Black Folk*. He introduced his critique with a sarcastic nod toward the accomplishments of his opponent, noting

“His programme [sic] of industrial education, conciliation of the South, and submission and silence as to civil and political rights, was not wholly original; ... But Mr. Washington first indissolubly linked these things; he put enthusiasm, unlimited energy, and perfect faith into this programme [sic], and changed it from a by-path into a veritable Way of Life.”99

99 Ibid., 36-37.
The largest share of Du Bois’ withering analysis would rest on the disparate impact of Washington’s paradoxical approach; he at once demanded that blacks rely on themselves, yet simultaneously shed the social and political means to accomplish a true measure of freedom. Beginning with the “Atlanta Compromise” he attacks the very underpinnings of Washington and the Tuskegee model as both implausible and unpalatable as a means to black independence and acceptance in America.

“In all things purely social we can be as separate as the five fingers, and yet one as the hand in all things essential to mutual progress.” Du Bois believes the “compromise” sent entirely the wrong message to the North and the South, and ran against the grain of great leadership within the African American community. By reserving his highest accolades for Frederick Douglass as “the greatest of American Negro leaders,” he answered his own position. To Du Bois it was evident that Douglass’ insistence on “assimilation through self assertion and no other terms” was the only acceptable posture that secured manliness, as well as political and civil equality.

Du Bois succinctly outlined by, the heart of the paradox when he insisted that, “Mr. Washington asks that black people give up, at least for the present, three things—

First – political power
Second – insistence on civil rights
Third – higher education of Negro youth”

100 Ibid., 37.
101 Ibid., 42.
102 Ibid., 44.
He went on to dismantle each of the concessions Washington's proposed. First, how could it be argued that political power could be ceded when it was obvious that no interested party can further itself in business without the vote. Second, "He insists on thrift and self-respect, but at the same time counsels a silent submission to civic inferiority such as is bound to sap the manhood of any race in the long run."  

Finally, he challenged the soundness of Washington's argument that blacks need only attend a common school, as that proposition would produce no professionally trained black teachers to instruct in those schools.

Du Bois not only leveled the accusation, but also asserted that other leaders were equally critical, but remained silent, toward creating dissension. Leaders like "The Grimkes, Kelly Miller, and J.W.E. Brown were said to insist on the right to vote, civic equality, and the education of youth according to ability," giving powerful credibility to Du Bois' condemnation. Washington's posturing to reconcile the races came at too high a price for Du Bois. Again he appealed to a sense of manliness, astutely measuring the ultimate cost of surrender in the emerging industrial democracy.

"if that reconciliation is to be marked by industrial slavery and civic death of those same black men, with permanent legislation into a position of inferiority, then those black men, if they are really men, are called upon by every consideration of patriotism and loyalty to oppose

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103 Ibid., 45.
104 Ibid.
such a course by all civilized methods, even though such opposition involves disagreement with Mr. Booker T. Washington."\textsuperscript{105}

Du Bois further warned against the kind of capitulation offered by Washington, adding "We have no right to sit silently by while the inevitable seeds are sown for a harvest of disaster to our own children black and white."\textsuperscript{106}

As he closed his missive to Washington, He suggested an alternative proffering the notion that an active commitment to oppose Washington's program where it falls short was the responsibility of all. Booker T. Washington was not always wrong, Du Bois conceded. He had risked his reputation as an appeaser twice; once when he spoke out against the Spanish American War, specifically citing the virulent racism of the South, and again, when he dined with Theodore Roosevelt, drawing public condemnation.\textsuperscript{107} He even acknowledged Washington's work against lynching, and his behind the scenes efforts to put a stop to "sinister schemes and unfortunate happenings."\textsuperscript{108} In the end though, the Tuskegee philosophy was too quiescent in the face of the virulent racism that impacted the day to day lives of African Americans. Instead, Du Bois insisted that "By every civilized and peaceful method we must strive for the rights which the world accords to men..., clinging unwaveringly to those great words...That all men are created equal."\textsuperscript{109} Moving toward the close of the decade,

\begin{footnotes}
\item[105] Ibid., 47.
\item[106] Ibid.
\item[107] Ibid., 38.
\item[108] Ibid., 49.
\item[109] Ibid., 50.
\end{footnotes}
there would be many men and women who, dissatisfied with the status of race in America, would lay claim to that very ideal.
CHAPTER III

PLESSY AND ITS AFTERMATH

As the proximity to the Civil War grew more distant, the country’s disposition towards race moved away from whatever spirit of reform existed during Reconstruction. The North’s antipathy for the South shifted through the years, as northern companies expanded their commerce, creating more intertwined economy. Racial sympathies too began to wane, as some looked upon African Americans as a group that had received enough attention and rights, as implicit in Justice Bradley’s remarks in the Civil Rights Cases (1883). He concluded “when a man has emerged from slavery, and, by the aid of beneficent legislation, has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen and ceases to be the special favorite of the laws.”\textsuperscript{110}

There are times when judicial rulings are juxtaposed with the sentiment of the nation, but by 1896 segregation was accepted within large segments of society, both inside and outside the African American community. Charles Lofgren has noted that the \textit{Plessy} decision garnered very little notice in the popular press, or even in the writings of the legal community.\textsuperscript{111} That incongruity needs to be noted, as the

\textsuperscript{110} Civil Rights Cases, 109 U.S. 3 (1883), 25.
\textsuperscript{111} Charles A. Lofgren, \textit{The Plessy Case: A Legal-Historical Interpretation} (New York, Oxford University Press, 1987), 5.
profound events in the 1890’s would be deeply felt by African Americans as they pursued equality in the face of de jure discrimination ushered in by the *Plessy* decision. The question that loomed for the many interested parties was how to best achieve those ends, and carry reform actively forward. How, for example, should those of ordinary means and circumstance confront inequality? Would it be best addressed through the workplace, in allegiance with their fellow workers, and perhaps unions? Since most would observe that union’s present a democratic force within the workplace, the battle for blacks to be accepted within the brotherhood of unions at the end of the Gilded Age is representative of the foundations of race, labor, and the law, that would dominate the first half of the twentieth century. To that end, perhaps the court system offered the best avenue of attack, trusting that the justices would ultimately interpret the Thirteenth, Fourteenth and Fifteenth Amendments as they were intended. Is it possible that working through party politics, and fighting in the service of one’s country would prove irrevocably to the nation that inequality in all of its manifestations should be erased? These questions would pervade the end of the last decade of the nineteenth century, one which began with a glimmer of hope, but as *Plessy* was decided, came to a most unsatisfying dénouement.

The pace of industrialization, coupled with the stultifying expansion of Jim Crow laws critically shaped the political economy within which blacks operated, influencing as well the parameters of debate within the black community. In framing the political economy at the end of the nineteenth century, and the intellectual debate
within the circle of African American elites, it is first necessary to define the world of work as it existed for workers of color.

The beginning of the 1890's witnessed a host of contested issues surrounding race in the United States, and included the worlds of work, politics, and the law. The rapid pace of industrialization during the end of the Gilded Age spawned a number of organized efforts on the part of workers, both rural and urban, to carve out a protective sphere against the abuses of corporate entities. Business and industry were aided by local, state and federal governments that were blind to the plight of workers and the staggering weight of racial prejudice within that system. The condition of black labor depended heavily upon the ability of workers to organize on their own behalves, and in considering the 1890’s, that ability must be understood within the contexts of race, class and the state.

The labor movement in the United States has long presented historians with stultifying hurdles as they attempt to navigate the complexities and nuanced relationships that existed within working America, and the specter of race certainly adds to the richness and complexity of labor history.112 The end of the nineteenth century provides a useful vantage point from which to examine the barriers to an equitable workplace that were established by racism before Plessy v. Ferguson gave legal segregation the sanction of law. The vigorous debate among black workers over whether they should cross picket lines, join established unions (largely directed by

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Robert Zieger’s historiographical essay on black labor, which was presented at the OAH regional meeting on July 09, 2004, indicated out that there were three main areas of historiographical inquiry; these were classified as “wages of whiteness,” “black agency,” and “public policy” schools.
whites), or create their own, was shaped first by de facto and then de jure segregation in that last decade.

The abject failure of reconstruction left black workers to compete with whites where de facto segregation necessarily advantaged the latter, shaping the interactions of both groups when it came to the formation of early unions. In 1866, the formation of the National Labor Union (NLU) set out to attract as many of the trades as it could in an effort to bolster labor’s voice, white and black. According to its founding document, the purpose of the NLU was “to help inculcate the grand ennobling idea that the interests of labor are one; that there should be no distinction of race.” But when it came to admitting black workers, the NLU was less willing to accommodate its fellow laborers.

In 1869, after three years of frustrating lip service on the part of the NLU toward real integration of the union, a group of black caulkers in Baltimore organized on its own, creating the National Colored Labor Union (NCLU). Unionization accounted for one part of the strategy, as the successful organizing of black laborers was followed by steps to bolster the working lives of African Americans through legislation and organizational affiliations. In Lovejoy, Texas, the Colored Farmers’ National Alliance and Cooperative was founded to improve agricultural conditions and advocate for candidates who had the potential to defeat sitting politicians in the south. Legislatively, in 1890 a proposed reparations bill introduced by Republican

Walter R. Vaughn died in committee, but according to labor historian William H. Harris the Ex-Slave Mutual Relief Bounty and Pension Association, organized by southern blacks, promoted four more reparations bills before 1915.\textsuperscript{115} Earlier discussions over which party favored the worker, and the appropriate role of politics, along with the economic downturn of the 1870’s, spelled the end for the NLU. Another organization, the Knights of Labor (KOL), would attempt to expand industrial and craft representation in an effort to effectively organize all labor.

The Noble Order of the Knights rose amid the consolidation of the Industrial Revolution and the workers’ collective response to it, during the Gilded Age and Progressive Era. The Knights ascended to their zenith as an organization during the Gilded Age, as the Knights of Labor sought to organize the skilled and unskilled laborers, black and white, men and women, rural and urban, to gain, in their words, a “workingman’s democracy,” a country that once again would uphold the tenets of republicanism. As part of their agenda, the Knights actively pursued a sense of community responsibility that mixed religion, temperance, and some aspects of populism, as well as socialism, to construct an equitable workplace and an economy that was more accommodating in its distribution of wealth. In order to accomplish their goals the Knights utilized education, the ballot, the strike, and effective organizational efforts at the local level.\textsuperscript{116}

\textsuperscript{115} Ibid., 33-34.
\textsuperscript{116} Leon, Fink, \textit{Workingmen’s Democracy: The Knights of Labor and American Politics} (Urbana and Chicago: University of Illinois Press, 1985)
The Knights of Labor (KOL) succeeded where the NLU did not. Recruiting all regardless of status paid, tremendous dividends in the beginning, and when their numbers peaked in 1886, eighty to ninety thousand blacks were included in a total membership of 700,000.\textsuperscript{117} The Knights held out the promise of a true working class movement, however organizing the mass of workers, laden as they were with their own agendas and prejudices, proved to be untenable. As the corporate elite consolidated their power nationally, the Knights were unable to match their organizational skills and began to fade as a union power. Labor historian Robert Zieger observed “the KOL fell victim to its own administrative confusion and internal conflicts, savage employer counterattacks, and poorly coordinated strikes,”\textsuperscript{118} leading to a precipitous decline after 1890.

These early attempts to organize highlight the fragility of unionizing and the interplay among the varied influences of race, class, and gender, let alone the vagaries of regionalism that further complicated efforts to organize. In his classic treatment, The Fall of the House of Labor: The Workplace, the State, and American Labor Activism, 1865-1925, David Montgomery points out that in the late nineteenth century, many craftworkers had a great deal of control over their own lives as well as those of coworkers and apprentices who depended upon their ability to perform highly skilled tasks. Skilled craftworkers had to have a manager’s aptitude, yet bore the label of workman. For the common laborer, defined as one who is unskilled toiling by the sweat of his brow, life was a series of upheavals, moving from job to

\textsuperscript{117} Ibid.

\textsuperscript{118} Zieger, For Jobs and Freedom, 27.
job. Many of these workers were supplied by immigration and had been displaced from the rural periphery.\textsuperscript{119} In the third group was the operatives, which comprised the pool of semi-skilled laborers. Throughout the late nineteenth century, deflation and depression were serious impediments to the livelihoods of all workers, as owners continued to seek profits by singularly focusing on the reduction of wages.

As workers began to organize and stand up to owners, they were radicalized in a peculiarly American way. While it is true that the work experience was homogenous for many workers, organizing those workers was complicated by the diversity of race, gender, ethnicity and class antagonisms. Key here, as Montgomery has indicated, is the fact that workers realized they had to rely on “mutualism,” because individualism was a quality enjoyed by the wealthy.\textsuperscript{120} It is at this point that the American Federation of Labor (AFL), organized trade unions that had become distanced from the KOL, uniting under one house and speaking for all workers thus a quadrupling AFL membership between 1897 and 1903. By the 1890’s Samuel Gompers, head of the Cigar makers union, emerged as the leader of the most powerful and recognized union in the country.\textsuperscript{121} But what were the implications for blacks attempting to organize under the umbrella of pure and simple labor?

The answer is that the American Federation of Labor was like much of official American politics and law. In its organizational documents the AFL used language that was accepting of all trade unionists, and race was not mentioned. Samuel

\textsuperscript{119} Ibid.
\textsuperscript{120} David Montgomery, \textit{The Fall of the House of Labor: Workplace, the State, and American Labor Activism, 1865-1925} (New York: Cambridge University Press, 1987), 3.
\textsuperscript{121} Zieger, \textit{For Jobs and Freedom}, 27.
Gompers even went so far as to state in 1891 that, “organized labor...is decidedly in favor of maintaining and encouraging the recognition of the equality between colored and white laborers.”\textsuperscript{122} Like American society, however, its leader and the organization turned a blind eye to much of the racism evident in the actions of its member unions, often requiring them only to clean up language in their constitutions, but not their discriminatory behavior. This was due to a practical calculation, one unbound by any greater concern regarding the common bonds of humanity, blacks were used by many owners as strikebreakers, and as source of labor to compete with, had to be included.\textsuperscript{123} The Depression of 1893 stressed the relationship between white and black workers as “African American leaders struggled with fact that unions like the railroad brotherhoods, and the AFL, were in practice exclusionary.”\textsuperscript{124} The reality of segregation in society and the workplace exacerbated the frustrations of blacks negotiating the Gilded Age. When they looked to the government and the AFL which expressed the rhetoric of freedom in society and the workplace respectively, they were faced with the reality of Jim Crow.

Homestead 1892

Interracial efforts to redress unfair wages, wretched hours, and atrocious safety conditions in the workplace, confound paradigms that seek to explain early

\textsuperscript{122} Ibid., 28.  
\textsuperscript{123} Ibid.  
\textsuperscript{124} Ibid., 29.
Gilded Age resistance to workplace exploitation exclusively within the Herbert Hill or Herbert Gutman constructs. Three conflicts that lay bare the pitfalls of an ideological approach that elevates one paradigm over another are the well known strikes at the Homestead Works (1892), the Pullman strike (1894), and the lesser known protest march of Coxey’s Army (1894). The fact of the matter is that race and racism were powerful forces that in the 1890’s were epitomized by the events of Homestead and Pullman. While racism was, frankly, self evident in many of the early unions, there were also times when black men and women, and white men and women organized along class lines out of mutual self-interest and mutual concern. Fascinatingly, these same arguments over integrating unions foreshadow the civil rights concerns and litigation that would occur during the first half of the twentieth century.

In early 1892 the Republican Party was already worried about the perception of a strike involving one of the world’s most powerful captains of industry. Benjamin Harrison, the presidential candidate, and Whitelaw Reid, his vice-presidential nominee, were both conscious of the party’s precarious positions among working people on issues like the tariff and the gold standard. The tension was palpable in Homestead, Pennsylvania a corporate town, where the workers earned good wages, far above those of non-union employees due to the success of the Amalgamated Association of Iron and Steel Workers Union.\textsuperscript{125} That there was going to be a standoff was obvious to most as even the Homestead local news reported that it “was

not so much a question of disagreement as to wages, but a design upon labor organization."¹²⁶ To complicate matters, Andrew Carnegie was out of the country, leaving Henry Clay Frick, a man openly antagonistic to unions, to carry out negotiations, while Carnegie vacationed in Europe.

Frick met with Hugh O’Donnell, who was selected to represent the union, and an impasse was almost certain as Frick insisted on a reduction in wages, as well as the introduction of new machinery which would certainly cost the union jobs and, at Carnegie’s insistence, eliminate the contract.¹²⁷ At one point O’Donnell met with Whitelaw Reid in an effort to intervene on their behalf presenting Carnegie with a letter to avoid a strike, but true to form, Carnegie left the negotiations in the capable hands of Henry Frick.¹²⁸ As the negotiations headed into June after languishing since the spring, Frick imposed a drop-dead date on the union members, after which he would begin interviewing replacements and lock out the union members.

Membership at the Homestead facility included white, mostly northern European, skilled and unskilled labor who were characterized as “Slavs, Hungarians, and a few blacks.”¹²⁹ Black steel workers in the south had been able to gain experience in the steel mills during the 1880’s, some as puddlers, and as times became difficult they moved north into Pittsburgh. It was there that the Amalgamated Association of Iron and Steel Workers had to make a decision regarding the admission of black members. In their constitution of 1881, the union “admitted

¹²⁶ Ibid., 68.
¹²⁷ Ibid., 12.
¹²⁸ Ibid., 89.
¹²⁹ Ibid., 68.
THE acceptance of "colored lodges" was not due to any attempt at real racial parity within the union, but rather a reaction to the realization that many black workers could become strikebreakers if they were left outside the union. So while the acceptance of black members lacked any real conception of racial harmony as was attempted by some earlier unions, it did qualify as a step in the right direction, perhaps based on class interests. These were men who were skilled enough to take their jobs as strikebreakers, especially as newer equipment reduced skill levels in many areas.

On July 1st, the strike was on as the remaining 2,400 men from the Homestead Works refused to show up for work, and Frick's plan to crush the union was on as he had 300 Pinkertons and strikebreakers brought in (some on barges) to take Homestead. In the clash both sides engaged in military style fighting, and the death toll was remarkably low considering the numbers of men involved. Breaking the backs of the strikers made possible by the power of the state exercised by the Governor of Pennsylvania, Robert E. Pattison, who summoned the state militia. The alliance of corporate and state military powers crushed the Amalgamated Association of Iron and Steel Workers, which at the time was the largest union in the country that include bi-racial members (albeit few). Unionization would not recover until the 1930's. under the leadership of John L. Lewis.131

Much of what is written about the Homestead Strike and race, to the extent that it is mentioned at all, tends to stress the role of blacks as strikebreakers. Many

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130 Nelson, Divided We Stand, 160-161.
blacks in fact were brought in, some under false pretenses, being told nothing of the strike or their role as strikebreakers. But it seems that more recognition should be given to the fact that there were white and black union members striking against both corporate and state power to fulfill common interests. After the strike some may have expected race relations to become exacerbated by increased competition, when race was frequently used by owners to keep them from uniting in common class interests. Yet in fact, authors Maurine W. Greenwald and Margo Anderson, in their book *Pittsburgh Surveyed: Social Science and Social Reform In The Early Twentieth Century*, found the opposite to be true. Richard Wright, himself an African American, canvassed black steel workers in the Clark Steel Mills, and in “One Hundred Negro Steel Workers” reported that in general documents the fact that workers were “optimistic,” and complimented of the “work ethic and racial harmony” in the mills. The authors of the Pittsburgh Survey are careful to note that “The optimistic tone of the reports, then, stems partly from a strategic desire to bring evidence of progress among Pittsburgh blacks to the attention of white people, and in so doing help to improve the city’s racial atmosphere.” However cautious one is in taking the report at face value, through these interviews evidence emerged that suggested that, blacks in Pittsburgh did enjoy a greater degree of integration and optimism that centered on work and the fruits of their labor after the strike in Homestead.

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133 Ibid., 206.
Throughout the era of industrialization there were hundreds of thousands of workers at any given time who had no jobs, no fruits of their labor about which to be optimistic about, and all too often nowhere to turn for help. The issue of unemployment and what should be done about it came to a head with the "Panic" of 1893 that acted in every way like a modern depression. The Depression started on Wall Street, and within six months five hundred banks had folded, accompanied by the bankruptcies of over six thousand businesses. Massive unemployment was addressed by the business community with of more, and drastic wage cuts to account for the bottom line. There was some philanthropy exercised, but not enough to alleviate the kind of deprivation and real hunger experienced by industrial wage workers. The disparity between rich and poor was marked by cruel displays of magnificent wealth by the fortunate that mocked the desperation of ordinary people. For instance in January of 1894, a rather large and lavish charity ball was thrown in Chicago to raise money for the poor. It was reported that, "While the affluent danced away a frigid night, the poor huddled outside, and their scantily clad bodies pierced by sharp winds sweeping off ice-covered Lake Michigan."\(^{134}\)

While the depression accounted for the spread of the phrase "wage slave" among those fortunate to have jobs, there was precious little comfort for those

without jobs, and Jacob Sechler Coxey lead a crusade against industrial unemployment by marching on Washington D.C. Coxey, a wealthy businessman from Ohio, genuinely wanted a world that would not threaten the lives of working people. “What I am after,” he said in a determined tone, “is to try to put this country in a condition so that no man who wants work shall be obliged to remain idle. I have a family myself and I don’t want my own sons to ever starve from want of work.” This sentiment encompassed all men and women of good will, regardless of skin color. It was his intent to read a speech from the steps of the Capitol demanding that the federal government address the plight of those who were unemployed.

Coxey’s Army, as it became known, left Ohio approximately four hundred strong, and unlike Eugene Debs’ American Railway Union, “Coxey’s ranks remained remarkably open to all comers.” Marchers faced welcoming crowds, which shared food, attended discussions held at the camps, and participated in good natured ballgames between local townsfolk and the marchers. The noted journalist Ray Stannard Baker traveled with Coxey’s Army and in his book, *Following the Color Line*, published in 1908, commented on the nature of race as the army moved its way toward the Capitol. He wrote that, “They always come out in rows along the white-washed fences and cheer lustily. There are a number of Negroes in the army and they all know that Coxey and Browne (his second in command) make no

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135 Ibid., 21.
136 Ibid., 62.
137 Ibid., 146.
distinction between them and their white companions. This fact made all the Negro population friends.”\(^{138}\)

Newspaper accounts from across the country began tracking and commenting on not only Coxey’s army, but the numbers that were joining his ranks. Other armies, seven in all, came from as far west as Seattle and San Francisco, and the Rocky Mountain States of Montana and Idaho, crossing Michigan and the Midwest, all making their way to Washington prepared to air their grievances and make their demands of the federal government.\(^ {139}\) Along the way newspapers reported similarly on the status of race within the armies. Passing through Iowa, Kelly’s Army was observed by a reporter from the *Burlingame Hawk-Eye*, who noted in the racially-tinged terms of the day, “There are several darkies in the army and they fraternize on a footing of equality with their white companions.”\(^ {140}\)

There were of course some who urged police to round up the vagrants and put them to work breaking rocks. The United States was then, and is still now, one of the only industrial democracies in the world that jails its population for being poor. In the 1890's it was the vagrancy laws that were used as a tool to literally re-enslave blacks who were sold to whites for the price of their fines, forced to work until the money was repaid. Richard Blackmon, the author of *Slavery by Another Name*, has

\(^{138}\) Ibid.
\(^{139}\) Ibid., 8-9.
\(^{140}\) Ibid., 193.
documented that by the end of the 1890's there were some 10,000 African Americans living in slavery nearly forty years after the Civil War.\textsuperscript{141}

It is interesting that the racialized verbiage of the reporter, suggesting an air of surprise, was not representative of the bi-racial cooperation within the ranks of Coxey's Army and its followers. The race baiting of the owners in their manufacturing plants, and the exclusionary practices of the unions, either complete, like the Railroad Brotherhoods, or partial, exclusion as practiced by unions maintaining the best jobs for whites, were absent from the sphere of the unemployed. Faced with the ultimate alienation in the laissez faire capitalism of the Gilded Age, unemployment, homelessness, and hunger, this group evidenced class interests as they fought for their place in the economy. There was nothing left to preserve at their rung in the industrial ladder, and common interest drove them forward to make their demands. As happened so often in labor stories of this era, it would be the power of the state that quashed their dreams of liberty.

As Coxey's Army made its way into Washington that spring the Cleveland administration was in no mood to have this oddity, as it seemed to many, play out in the Capitol. The authority of the state came down on Coxey's Army, and the police saved their harshest punishment for African Americans, who were singled out by the police chief himself. Other Coxeyites had been rounded up by federal authorities and handled by police, but in Washington D.C., thousands of police waited for the

\textsuperscript{141} Richard Blackmon, \textit{Slavery by Another Name: The Re-enslavement of Black Americans from the Civil War to World War II} (Random House, 2009)
confrontation that would come.  

Jacob Coxey was attempting to make his way to the steps of the Capitol, followed by the “Goddess of Peace,” when the attack from the police began and was disproportionately meted out because of race. “That black men and women were on the receiving end of billy clubs was no accident. According to police Chief W.G. Moore – ‘There is a colored population numbering 85,000 in this city, fully half of whom are unemployed and many of whom are vicious. We could not, of course, afford to permit any demonstration which would arouse them.”

Coxey’s Army went down to defeat, but the idea that blacks and whites could work together to stand up against the powers that be, over a protracted period of time, demonstrating, and gathering support from other working people was a sign of hope, although short lived. Out of the contestations of the workplace, and its ramifications for society more broadly, many African American looked toward the professional community for direction, and there found contention over the question of equality. The 90’s would bring many challenges of vital interest to the cause of racial justice in the areas of work, politics, and the law. These concerns would be taken up by ordinary people as they confronted daily impediments to freedom, and by a small cadre of professional lawyers seeking justice within the system, who would help to represent those interests.

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142 Ibid., 200-201.
143 Ibid., 180.
Confronting Jim Crow

Albion Tourgee and his co-council had hoped that the delay in oral arguments would work in their favor, however neither the construction of the court, nor decisions on which they had ruled during the interim, provided much encouragement. From the issuance of the writ of certiorari, to actually hearing oral arguments, the Supreme Court had continued its course of contravening the intended purposes of the post Civil War radical Republican amendments. They accomplished that feat by overturning the country’s first federal income tax, and weakening the Sherman Anti-Trust legislation by ruling in favor of a sugar trust that controlled ninety-eight percent of the sugar sold. It also weakened unions, granting an injunction against the American Railway Union, and that Eugene V. Debs should be sent to prison.144 With the court on a reactionary march, oral arguments in Plessy v. Ferguson were heard on April 18th 1896.

The court included Chief Justice Mellville Weston Fuller, a model of conservatism, who would ultimately choose justice Henry Billings Brown to write the majority decision. Fuller could certainly not be counted on to rule favorably on behalf of Plessy, given past court decisions and his own disposition on race. He had fought against an amendment that would have stopped any action on the part of the federal government from interfering in any way with slavery, and was unlikely to see

144 Ibid., 71.
the case *Plessy’s* way. On the other hand, individuals were certainly capable of change, as Justice Harlan would prove. A man who had grown up in the South and owned slaves himself, he had come to detest the institution of slavery, and recognized much of what the court had done in its previous decisions regarding the 14th Amendment to be clear departures from its original intent. Although Justice Henry Billings Brown, who would deliver the majority opinion in the case, had accomplished much in his career in the law, including holding the title of United States District judge for Eastern Michigan, he was “one of the court’s dimmer lights.”

In front of this court, Tourgee and Phillips would make their plea.

The case would not be argued, as Charles Lofgren indicates, to reverse Homer Plessy’s conviction (he was not convicted, in fact, he never admitted to being black), or on the basis of the equal protection clause of the 14th Amendment. Instead, according to Albion Tourgee, “The gist of our case, is the unconstitutionality of the assortment: not the question of equal accommodation...the State has no right to compel us to ride in a car ‘set apart’ for a particular race whether it is as good as another or not.” He would also argue that the act violated the 14th Amendment because passengers were denied the right to equal protection, due process, and liberty. Additionally he cites the arbitrariness of the conductor’s decision, and the interpretation of destruction of property (the seat).

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145 Ibid., 71.
147 Plessy, 163 U.S. at 539.
To bolster his arguments, Tourgee fell back on the original intent of the amendments, and previous cases that had skirted the issue of forced separation. He insisted that the 14th Amendment’s grant of national citizenship “had as its prime essential and very essence, the equality of personal right and free and secure enjoyment of all public privileges.” He also cited *Louisville, New Orleans and Texas Railway Company v. Mississippi* (1890) to demonstrate that although the court had sided with the notion of equal but separate in that case, it had “reserved judgment on whether individuals could be compelled to use the separate coaches.” 151

Tourgee also argued that *Strauder v. West Virginia* (1880) contradicted the *Slaughterhouse Cases*. In a murder trial for which the jury was all white, the court decided that restricting a jury member specifically because of his race did in fact violate the 14th Amendment. 152 Specifically, *Strauder* stated that blacks had “a positive immunity from discrimination-the right to exemption...from legal discrimination implying inferiority on civil society, lessening the enjoyment of the rights which others enjoy, and discriminations which are steps toward reducing them to the condition of a subject race,” without question a powerful citation for the cause of equality. 153 Finally, he argued unequivocally that the Separate Car Act made race itself a crime. 154 These arguments, well thought out and brilliantly argued, would fall victim to a Supreme Court that was willing to bypass the intent of the reconstruction amendments and construct its own law.

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151 Ibid., 156-157.  
152 *Strauder v. West Virginia*, 100 U.S. 303 (1879).  
153 *Lofgren, The Plessy Case*, 158.  
154 Ibid.
The 7-1 decision came down May 18th, 1896, with Justice Brown writing for the majority. He attacked Tourgee’s and Phillips’ arguments by obfuscating facts from previous decisions, commandeering the original intent of Congress regarding the 13th and 14th Amendments to impose a decision at odds with the original intent. He assailed the plaintiff’s position using cases that Tourgee understood would be difficult to argue against. As previous writers have noted, however, Brown “played fast and loose with history” and in “places slipped into absurdity and smuggled Social Darwinism into the Constitution.”

He began his troubling but systematic ruling with an examination of the plaintiff’s 13th Amendment claims.

Brown summarily dismissed the 13th Amendment claim by relying on the narrowest interpretation, holding that the Louisiana law “does not conflict with the Thirteenth Amendment, which abolished slavery and involuntary servitude, except as a punishment for crime.” Brown relied on a cursory reading of the Slaughterhouse Cases as he dismissed Tourgee’s assertion of the badge of slavery present in the act, as well as in the finding in the Civil Rights Cases. Citing the Civil Rights Cases, he declared “that the act of a mere individual, the owner of an inn, a public conveyance or place of amusement, refusing accommodations to colored people cannot be justly regarded as imposing any badge of slavery or servitude upon the applicant…” He went on to say “A statute which implies merely a legal distinction between the white and colored races…has no tendency to destroy the legal equality of the two races, or

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156 Plessy v. Ferguson, 163 U.S. 537, 542 (1896).
reestablish a state of involuntary servitude.”

With that Brown moved on to the plaintiff’s 14th Amendment claims.

Justice Brown’s interpretation of the 14th Amendment’s application in the case was nothing more than an exercise in judicial pretense to achieve an end fabricated from whole cloth. He first assailed the 14th Amendment’s applicability to Plessy by addressing the Slaughterhouse Cases. Here he quickly dismissed any connection, writing that, “The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either.”

Radical Republicans had intended to provide for exactly the kind of social equality that Brown was rejecting. Charles Sumner, as a leading Radical republican who had been intimately connected to the post Civil War amendments and legislation to enforce them, provides a useful voice into the mindset of those in Congress at the time. Justice Brown specifically referenced Roberts v. The City of Boston (1849), a case Sumner had argued involving school segregation. Sumner’s major points included the fact that “The exclusion of colored children from the public schools, which are open to white children, is a source of practical inconvenience to them and their parents, to which white persons are not exposed, and is, therefore, a violation of

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157 Ibid., 542-543.
158 Plessy v. Ferguson, 544.
equality." \footnote{Roberts v. The City of Boston, 5 Cush. 19 (1850).} Also, that any separation by race, "is in the nature of caste, and is a violation of equality." \footnote{Ibid., 202.} The "reasonable" doctrine that had crept into the post Civil War court’s rulings regarding the state’s authority to segregate addressed in prescient fashion, Sumner argued, that "discrimination made by the school committee of Boston, on account of color, is not legally reasonable." \footnote{Ibid., 203.} Lastly, even though colored parents had asked for separate schools, that fact "cannot affect the rights of colored people." \footnote{Ibid., 204.} Sumner never wavered in his Radical Republicanism, and while he lost that case, he carried the passion and recognition of the need to equate both social and political equality to the legislative acts of the congress. Brown used the Roberts case as evidence that states did allow for segregation in the public sphere, but failed to mention that six years later Massachusetts voted to outlaw the practice. \footnote{Kluger, Simple Justice, 75-76.}

To reinforce, his argument Justice Brown used the Civil Rights Cases (1883), which upended the Civil Rights Act, to demonstrate the limitations of the 14\textsuperscript{th} Amendment. The act invited "United States citizens of every race and color to ‘full and equal’ enjoyment of inns, public conveyances, theaters, and other places of public amusement." \footnote{Valerie W. Weaver, “The Failure of Civil Rights 1875-1883 and its Repercussions,” The Journal of Negro History, Vol. 54, No. 4 (Oct., 1969): 368.} In that case Justice Bradley ruled that the 14\textsuperscript{th} Amendment did not allow Congress to pass laws interfering with existing laws that fell within the “domain of the states,” and that it could not “create a code of municipal law for the
regulation of private rights." It allowed private owners to discriminate against African Americans so long as the actor was not the state. This interpretation was far afield from the intent of those who wrote the 14th Amendment, which granted congressional authority for enforcement, and flew in the face of the Civil Rights Act’s intended outcome of restricting states from allowing acts of discrimination.

In the end, Brown closed his majority opinion against Homer Plessy by invoking the reasonableness doctrine, and oddly leaving the question of Plessy’s race, the starting point of contention in this whole case, to some future concern of the state of Louisiana. The issue of the statute of Louisiana was reduced to the question of reasonableness, and from the bench Brown pronounced that, “we cannot say that a law (the Separate Car Act) which authorizes or even requires the separation of the two races in public conveyances is unreasonable.” From there, it was a small step in logic for Brown to conclude that there was no “badge of inferiority” (disregarding legislative intent) associated with the law, and that equality could not be produced through legislation in any case. With regard to the issue of race, Justice Brown acknowledged that various states differed over how much “colored blood” was needed to qualify an individual as colored. With that he noted that “Under the allegations of this petition it may undoubtedly become a question of importance whether, under the laws of Louisiana, the petitioner belongs to the white or colored race.”

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165 Plessy v. Ferguson, 163 U.S. 537 at 546-547.  
166 Plessy v. Ferguson, 551-552.  
167 Ibid.  
168 Ibid., 553.
Justice Harlan, in his now famous dissent, recognized the majority opinion for what it was; "a thin disguise of ‘equal accommodation” he declared, “will not mislead anyone." As he moved through his rebuttal, he argued the original intent of the 13th, 14th, and 15th Amendments, and their incompatibility with the notion of equal accommodations. There were to be no badges of slavery or servitude - equal citizenship necessarily equated to equal protection. The 15th Amendment’s guarantee that all citizens, regardless of color, participate in the political control of their country finalized the triumvirate's purpose to fulfill the spirit of the law. In a nutshell, “the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color.”

One of the less-noticed aspects of Harlan’s dissent is the way in which he encapsulates a working definition of exactly what constituted personal liberty in the 1890’s. He pronounced succinctly that it “consists in the power of locomotion, of changing situation, or removing one’s person to whatsoever places one’s own inclination may direct, without imprisonment or restraint unless by due course of law.” Given that understanding of personal liberty, Justice Harlan was led to join those who understood that the arbitrary restricting of the movement of citizens did

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169 Lofgren, The Plessy Case, 3.
170 Plessy v. Ferguson, 163 U.S. 537 (1896), 556.
171 Ibid., 557.
create an effective badge of servitude on what was a public highway. His decision was scathing in its rebuke of the majority’s tortured manipulation of the law that allowed Louisiana’s statute to prevail. In his opinion, it was “hostile to both the spirit and letter of the Constitution of the United States.” Though the decision was received as affirmation of accepted reality, garnering little comment from the national press, it was perhaps due to the fact that the country was looking towards a presidential race. Political discourse at the end of the century revealed African Americans indulging in hearty discussions over the nation’s new found status as a rising power.

Politics, Race, and War

As the depression of 1893 deepened, the Republicans captured both the House and the Senate in the elections of 1894, and contemplated a sweep of the presidency in 1896. After a staggering year, the American political elite surveyed the events of the preceding months, and many wondered what direction the country would take. Henry Adams, the scion of the Adams family, as well as an historian and author, looked back at the recent strife between labor and business that included the Homestead Strike, Coxey’s successful march on Washington D.C., and the great Pullman strike. All of these demanded action on the part of federal government,

172 Ibid., 563.
causing him to wonder about the status of capitalism in the United States. To his brother, Brooks, Henry Adams wrote in the summer of 1895, “Cleveland and Olney have relapsed into their normal hog-like attitudes of indifference, and Congress is disorganized, stupid and childlike as ever. Once more we are under the whip of the bankers.”

Adams was left to contemplate whether the United States was about to disintegrate, or head into some new phase of capitalism. He spoke for a class of men and women who had great influence on the upcoming presidential election of 1896, as Democrats and Republicans attempted to sort out their prospective candidates in what would come to be known as the year of fusion.

African Americans and others frustrated by the downturn in the economy, the direction of foreign affairs, and the general status of inequality in politics, surged into alliances and political parties that attempted to alleviate the very real pain and oppression with which people coped on a daily basis. There was a menu of parties in 1896; people could choose from the People’s Party, the Socialist Party, Populists, and more, each attempting to displace the powerful and corrupt establishment that was squeezing them. On race, however, many of the parties simply failed. The Socialists, like the Knights of Labor, and the Populist Party were “receptive to women and African Americans who were ignored by the craft unions,” but there were regional problems with the party in the south and southwest, as well as qualitative differences among the leadership regarding race. Eugene V. Debs at least spoke of bi-racial

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174 Ibid., 536.
175 Ibid.
alliances, but Victor Berger who was the founder of the American Socialist Party was a "strident racist."\textsuperscript{176}

The Populists, led by James B. Weaver, sounded the alarm against combinations and monopolies, as Weaver warned "The poor African slave found a welcome in Canada where neither master nor bloodhound could molest him. But the wage slave of today cannot look to the North Star to guide him to freedom. All nations of the earth have federated to cut off his retreat and hold him to his hopeless task."\textsuperscript{177} The moral language of populism, with its appeal to order and justice, presented real problems for southern populists. According to Michael Kazin "black farmers, 90% of whom lived in the south and their white counterparts had a great deal in common, but the racial prejudices of the time made it difficult to be inclusive. The result was that southern populists worked with blacks on common economic matters but they avoided the idea of a "biracial order."\textsuperscript{178} Businesses, both north and south, were dominated by an outlook so permeated by social Darwinism that they were eager to turn back the dangerously perceived "wild eyed populism" that was gaining momentum.\textsuperscript{179}

Both Democrats and Republicans offered candidates who were wholly unconcerned with the issue of race (William McKinley), or nearly silent (William Jennings Bryan). McKinley was the creation of Mark Hanna, the man who

\textsuperscript{177} Schwantes, \textit{Coxey's Army}, 19.
\textsuperscript{179} Kluger, \textit{Simple Justice}, 70.
orchestrated the Republican machine not only in Ohio, but nationally, in the run-up to the campaign. Hannah served the people of Ohio as Senator, and had been building the case for McKinley for four years, receiving contributions from many of the titans of industry who were unsettled by the increasing specter of reform. Change which, if implemented, would threaten their control over the political and economic levers of power.

After building a sizeable war chest, Hannah made sure that his candidate, the Governor of Ohio, was a reassuring figure in times of trouble. Bryan, on the other hand, was a more persuasive speaker, known as the “boy orator of the Platte,” although as one McKinley enthusiast rejoiced, the Platte was a river “six inches deep and six miles wide at the mouth.” Unfortunately, he did not speak much on behalf of African Americans; Kazin has reasoned that as, “The dutiful son of a Virginia-born apostle of Stephen Douglas, he could believe in a mass of pious ‘commoners’ in perpetual conflict with a greedy and irreligious elite only if he omitted black people from membership in either camp.”

Given the limited political options available to African Americans in the aftermath of Plessy, it is little wonder that tensions were heated between groups, both in business and agriculture, that were attempting to find common cause and political efficacy as they attempted to claim their shares of equality. In labor, tensions arose over Marxism, the Industrial Workingmen’s Association, and the Labor Reform Party.

181 Ibid., 287.
that was created to battle against capitalist exploiters. Issac Myers, a black shipbuilder in Baltimore, in an effort to allay the fears of ownership, spoke out regarding the appropriate disposition of black unions. He declared to a Richmond convention that the National Colored Labor Union wished "to establish the friendliest relationship between labor and capital, because we believe their interests to be inseparable." This, after a history in which white workers struck to get more than 1,000 black workers fired in the Baltimore shipyard.\(^{183}\)

The movement of the farmers' alliances and their ties to political parties also demonstrates the complicated nature of race and organizing. As Elizabeth Sanders has written, the Farmers Alliance would serve as the progenitor of the Populist Party and ultimately its relationship with the Democratic Party in 1896, the year of fusion. It was hampered almost immediately by segregationist laws in the south. For example, in 1882 blacks were not allowed to attend meetings in Texas because state laws forbade women to attend meetings at which blacks were in attendance.\(^{184}\) This ultimately led to the creation of the Colored Farmers Alliance, and within a decade the People's Party announced that "Alliance officials now urged an outreach to the Colored Farmers Alliance members, and in 1891-92 it was possible to envision a new era in southern race relations, one based on a politicized movement of farmers as a class."\(^{185}\)

\(^{183}\) Smith, *The Rise of Industrial America*, 645.

\(^{184}\) Sanders, *Roots of Reform*, 118.

\(^{185}\) Ibid., 128-129.
In 1896 the desperate state of farmers over indebtedness led both candidates to address their plight, but neither offered a remedy. This led William Hope Harvey, a noted author on financial matters, to suggest to Senator Vilas of Wisconsin that the government buy the farmers’ debt and allow them to repay it at a low rate of interest. In response Vilas asked Harvey what part of the constitution would allow the government to purchase the debt. This was more than Harvey could bear and he shot back that it was

“the same article that gave Congress the right to ‘lend hundreds of millions to the Union Pacific Railroad; to give away nearly $2,000,000 in pensions...or to establish protective tariffs for special industries, or to appropriate money for Louisiana and Alaska purchases; or to pay bounties to the sugar growers...In short you ask for a Constitutional right to extend the credit of government to the distressed land owners of the United States...I am inclined to reply, ‘oh, cease your fooling.’”\(^{186}\)

In fact these loans, had they been made available, would have benefitted many African American farmers who found themselves in need of just such relief. Instead, the Cleveland administration, ideologically limited in its use of the government, did nothing, and in the elections of 1896 the Republicans captured the White House. It was a closer race than the numbers would at first reveal. Electorally, McKinley garnered 270 electoral votes to Bryan’s 176. The popular vote was considerably

\(^{186}\) Smith, *The Rise of Industrial America*, 536-537.
closer, however, as McKinley accrued 7,035,638 popular votes to Bryan’s 6,467,946, with John Palmer (National Democratic Party) collecting 131,529 and Charles Hatchet, the Socialist, picking up 36,454 votes. Had Bryan been able to carry any one of a number of major cities in four or five key states, it would have been a different story electorally, but William Jennings Bryan was as capable of scaring a crowd as he was of winning them over. One of the consequences of the election was to place a president who, although disposed against an aggressive foreign policy, was too feeble to stand for long against the pressure building over Spain. 

War

As the Depression eased and McKinley settled into office, foreign affairs began to dominate the new administration’s attentions. Spain had been struggling with its holdings in Venezuela and Cuba, as well as in the Philippines. Their fragile grip, combined with a growing U.S. ambition to expand, would be anything but liberating for those in Cuba, Puerto Rico, Hawaii, or the Philippines, despite McKinley’s call for self-governance and independence. For that matter, African Americans in the U.S. also felt the stinging rebuke of racism in the face of indisputable and documented heroism in the Spanish American War, as well as the war in the Philippines. While there were competent diplomatic efforts to avoid a war with Spain, those efforts were compromised by contradictory and hostile actions on

the part of the U.S. Sending the battleship *Maine* to Havana, Cuba, could only be interpreted as hostile by the Spanish, and when it exploded (a malfunctioning boiler), killing 258 men, Spain was blamed. Thus the wheels of conflict were set in motion, leading to a declaration of war on April 20th, 1898.188

As troops were mobilized, the 9th and 10th Calvary, comprised of African American troops who had fighting experience in the Indian wars of the West, were immediately sent to Tampa, Florida to await deployment and the chance to prove themselves in the defense of their country. The 25th Infantry, as it made its way down to Tampa, experienced mixed crowd reaction. By and large the black troops were received well by crowds of whites and blacks, with the exception of a few places in Georgia, where Sergeant-Major Pullen of the 25th Infantry explained that “it mattered not if we were soldiers of the United States, and going to fight for the honor of our country and the freedom of an oppressed and starving people, we were ‘niggers,’ as they called us, and treated us with contempt. There was no enthusiasm nor stars and stripes in Georgia. That is the kind of ‘united country’ we saw in the South.”189

Heading into battle for El Caney the African American troops fought valiantly, leading charges ahead of white troops, and taking significant ground while suffering casualties that seemed to go unnoticed in the press. On June 30th the battle of El Caney was underway, with white troops pinned down by fire from a well-fortified position on a hill top, while the 25th Infantry made the charge, capturing the

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189 Ibid., 23.
fortification from the Spanish. Insultingly, it was reported that the 12th Infantry led the charge, accompanied by the 25th. Recounting what actually happened, who writes,

"Private T.C. Butler, Company H, 25th Infantry, was the first man to enter the block-house at El Caney, and took possession of the Spanish flag for his regiment. An officer of the 12th infantry came up while Butler was in the house and ordered him to give up the flag, which he was compelled to do, but not until he had torn a piece off the flag to substantiate his report to his Colonel of the injustice which had been done to him."\(^{190}\)

The major press did on occasion document the heroism of black soldiers. The New York Times editorialized that "among the American troops that stormed the hills at El Caney was a regiment of black soldiers whose gallantry brought cheer on cheer from their white comrades."\(^{191}\) While complimentary and true, the New York Times also substantiated the many complaints of black soldiers by not fully stating the significant role that African American soldiers played in the success of one of the greatest battles of that war. The black press echoed many of the same frustrations, for example, the Christian Recorder complained in its editorials of the unfair reporting, insisting that black soldiers deserved fair reporting and acknowledgment for "driving

\(^{190}\) Ibid., 30.
\(^{191}\) New York Times, July 5, 1898, 6.
the Dons from their strongholds of Cuban oppression." As the war dragged on, blacks were increasingly frustrated by the lack of respect and appreciation for their patriotic efforts.193

This frustration is instructive, as some voices in the African American community, while disappointed, still advocated for blacks to continue their patriotism and support the war. Maintaining that patriotic stance exposed fissures within the black community over imperialism, the conflicts of race at home, and the "liberating purpose" of the war, particularly as the issues of race and anti-imperialism gathered momentum.194 Laws at home protecting blacks from violence were increasingly abrogated, as evidenced by events such as the "massacre" in Wilmington, North Carolina, the Mine Wars in Illinois, and the Race Riots in New Orleans. Ironically, at the same time the United States used its power to extend safety to the Cuban people, African Americans in the U.S. felt compelled to prompt those attending the Afro-American Council in 1898 to solicit help from other countries in an effort to convince America of its obligations to protect its own citizens at home.195

Of course some of the press favored the war, and some, like Des Moine's, Iowa State Bystander and Milwaukee's, Wisconsin Weekly Advocate, portrayed the war as a necessity, giving black soldiers opportunities to prove their patriotism, and

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192 Christian Recorder, August 11, 1898.
195 Gatewood, Black Americans and the White Man's Burden, 196-197.
painted "Auginaldo as an ingrate." In the black press too, imperialism and the racialized nature of the war were addressed in particular southern criticism, and its growing anti-imperialism that was ideologically wed to social Darwinism. Lamenting the acquisition people of color through the expansion of empire, Calvin Chase of the Washington Bee protested "the government...should never have asked Spain for these islands ...We should have...taken possession [of them]." He was intimating that the United States should have begun its liberation of the Philippines absent the purchasing of a people. He went on to speak to southern reticence dismissing "as wholly specious the argument of Southern Democrats who questioned 'the wisdom of accepting the Philippines without the consent of the governed. The white Southerner was 'the last person who should talk about the consent of the governed.'" It is the conclusion of Paul Kramer, author of The Blood of Government, that much of the anti-imperialism that existed was actually fueled by racism and a reluctance to add to the race problem at home by assimilating more minorities.

There were also a growing number of voices critical of the entire effort. Lewis H. Douglass commented that "it is a sorry though true fact, that wherever this government controls, injustice to the dark race prevails. The people of Cuba, Porto Rico [sic], Hawaii and Manila know it as well as do the wronged Indian and outraged

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196 Ibid., 191.  
197 Ibid., 188-189.  
198 Ibid.  
black man in the United States." It was obvious to many that the contradictions between the rhetoric of freedom and liberation, and the realities at home and abroad were too divergent to ignore. The talk of black soldiers distinguishing themselves in battle, and the requisite respect that followed at home, were not readily apparent, and there was also the anxiety raised over Republicans expanding the empire, creating new "racial oppression."

As the nineteenth century drew to a close, the aftermath of *Plessy v. Ferguson* and war abroad left many African Americans questioning their positions in the new century. In particular, questions surrounding what could be done to achieve the level of social, political, legal, and economic equality that *Plessy* had denied them dominated the discourse. Complicating the effort at equality was a judicial branch that had ignored the post Civil War amendments granting freedom and equality to African Americans. Adding to those concerns was a new administrative state that had crystallized under the McKinley and Roosevelt administrations. Forged in the imperialist adventures of the wars in Cuba and the Philippines, the U.S. was revealed to be a world power that subjugated persons of color abroad as well as at home. International experiences with race and war, left many black soldiers embittered and disillusioned as they returned home.

201 Ibid., 248-249.
The Houston Family

Throughout the tumultuous end of the 1800's, more than a quarter century removed from the Civil War, many Americans contemplated a new world in the wake of the rhetoric of freedom, in which the Jeffersonian creed would be enjoyed by all. There remained, however, large numbers of people; many in positions of power, who sought to redeem the old world of white privilege through new legal or extralegal means if necessary. But there were signs of hope on the horizon. That hope was particularly encouraging for families, many of whom in 1890 straddled the old world and the new, having survived slavery, and carved out lives that promised success. The Houstons of Washington D.C. were such a family, with one generation born into slavery, and their children born into freedom. From these circumstances they fashioned a place within the black professional class.

In the 1890's, Washington D.C. was transformed from a capital dominated by a narrow but spectacular skyline sheltering fewer than 40,000 people, to a city containing almost five times that number. Construction projects initiated by the federal government attempted to keep pace with the demands of a city in the throes of modernization. In 1893, Washington still had not connected many of its residences to city water, leading to an outbreak of cholera, and it had only found a temporary location for the Supreme Court in 1895, housing it in the Old Senate Building. It


\[\textit{Ibid., 46.}\]
was from this building 1896 that it would deliver its ruling in *Plessy v. Ferguson* in, granting official sanction to a segregated nation, and articulating the doctrine of separate but equal. It is also within this city that Charles Hamilton Houston would be born and later devote his life to undoing *Plessy*.

Houston was born in the spring of 1895 to a family solidly situated in the professional class of Washington D.C. His father, William Houston, was a lawyer with a successful practice in the city, who secured his son entrance to the elite public schools for black students of both working class and white collar backgrounds. This path would increase the likelihood that the young Charlie could also claim a career in law (his father's hope), or a satisfying position within an equally respected field, thereby garnering the economic success that afforded blacks of means in Washington D.C. a degree of stature and independence amidst the obvious inequalities of the day. These inequalities had been resisted by the Houston family reaching back into slavery, creating a rich familial history of overcoming oppression.²⁰⁵

When it came time for Charlie (as they called him) to go to school, he attended segregated public schools. He first enrolled in Garrison Elementary, completing the eighth grade at the age of twelve by attending summer school. Meanwhile, his father had been practicing law full-time during the day, and was a well respected professor at Howard University in the evenings.²⁰⁶

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for high school, Charlie attended the prestigious M Street High School, the first African American high school in the country. Its curriculum was rigorous, offering English, Latin, French, Spanish, Greek, German, history, mathematics, the sciences, the arts, music and physical education. It was, by reputation, a college preparatory school, and had been "fiercely resisting recurrent pressures upon it to become vocational, commercial or 'general.'"\(^{207}\)

At M Street, almost all of Charles' teachers held four year degrees or higher, and the school maintained its competitive edge because black teachers earned a salary that fell short of white's by approximately 10%. Some have commented that it may have been the finest black high school in the country.\(^{208}\) Impressively, when it came time to graduate, the sixteen year old Houston was valedictorian of his class, and the recipient of a "full academic scholarship to the University of Pittsburgh."\(^{209}\) It was consistent with his parents' expectations however, that they dissuaded Charles from accepting the scholarship to Pittsburgh. Instead, they encouraged him to apply to other prestigious schools, to maximize his potential and opportunities.\(^{210}\) One of the schools too which he had made application was Amherst, which accepted him. At his parents urging, he declined Pittsburgh's full ride scholarship, and they prepared to pay for the optimal educational experience for their son. However, international events were beginning to shape the tenor of global discussions regarding race, and shortly after Charles Houston's graduation from Amherst, the first global

\(^{207}\) Ibid., 28.
conflagration of the twentieth century would impel Charles in an entirely new direction.

At the turn of the twentieth century, London’s Pan African Summit allowed frustrated leaders at home, like W.E.B. Du Bois, to inform Europeans of the status of race in America. It was in London, that Du Bois pronounced the problem of the twentieth century to be the color line. Taken together, the broadening international avenues of information and experience prepared many to live in and confront the Plessy era. Ironically, it would be America’s involvement in another war to liberate the world from oppression that would radicalize a young African American soldier named Charles Hamilton Houston, who would dedicate his life to dismantling Plessy.
The commencement of the twentieth century brought with it an articulation of the “New Negro” that would undergo several iterations over those first three decades, and provide the impetus for several reform movements. Antedating the Harlem Renaissance (its more popular association) by more than twenty years, Henry Louis Gates Jr. has traced the “New Negro’s” inception to the early 1890’s.\textsuperscript{211} African Americans revealed a proactive discourse, insisting on the implementation of rights guaranteed in the Thirteenth, Fourteenth, and Fifteenth Amendments, that were eviscerated by the Plessy decision. Accompanying cultural representations were political manifestations designed to confront the Tuskegee philosophy head-on. The Niagara Movement in 1905, and more potently, the National Association for the Advancement of Colored People in 1909, demanded the full citizenship rights guaranteed by the Civil War amendments. As the “New Negro” movement evolved into the 1920’s, the Harlem Renaissance produced stunning works of intellect and art that challenged the status quo, adding fresh voices to the movement. It was in this hopeful atmosphere that Charles Houston followed the advice of his father, eschewed

the scholarship offer, and with the emotional and financial support of his parents enrolled in Amherst College for the fall of 1911.212

Making his way nearly four hundred miles from Washington D.C., to picturesque Amherst College, located in central Massachusetts, he was determined to distinguish himself among his peers, and earn the respect of his parents. Amherst, like only a handful of colleges in the early twentieth century allowed the admission of blacks, providing their tenure was absent any discordant attention. Like many young people entering college, Charles was uncertain as to what he wanted to do with his life in those early years, and probably would have been happiest pursuing music.213 He had grown into a handsome young man with an even disposition, sharp intellect, and a work ethic that served him well in college. Liked by his classmates, Charles was personable though because of his race he was excluded on many occasions. His time was spent on his studies, where he excelled under the continuous support of his mother and father, for whom he was a continuous source of pride. While Charles would not commit to a career in the law, as his undergraduate career drew to a close his father remained hopeful that his son would change his mind. That hope, however, would go unfulfilled for the moment; instead the decision practice law would be the product of larger socio-cultural, global, and personal developments a few years in the offing. Rather, Houston graduated Magna Cum Laude in the spring of 1915, and his

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213 Ibid., 30-31.
parents took rare time away from their everyday responsibilities to celebrate and share the moment with their son.\textsuperscript{214}

After graduating from Amherst at the age of nineteen, Charles Houston was working at Howard University at a job procured by his father requiring him to teach English, and work in Howard's Commercial Department. The Commercial Department served as a place for students who were not quite ready for the rigors of collegiate work, allowing them to acquire needed skills by taking general education courses, along with practical shorthand and business classes. Although it was not a passion for him in the way that music was, he dove into his responsibilities fully appreciative of the opportunity to teach at a college as prestigious as Howard and secure in the knowledge that his family had his best interests at heart.\textsuperscript{215} However, as the war in Europe waged on, Charles could see that the United States was clearly going to enter on the side of the allies, and when war was ultimately declared he was determined to enlist as soon as possible to avoid being drafted. To be drafted, he well understood, would mean assignment to a labor unit, and he had his sights set on becoming an officer.\textsuperscript{216}

\textsuperscript{214} Ibid., 33-34.
\textsuperscript{215} Ibid., 34-36.
\textsuperscript{216} Charles H. Houston, \textit{The Pittsburgh Courier}, "Saving The World For Democracy," July 20\textsuperscript{th}, 1940, 13.
The Approach of War

While the guns of August blazed in Europe, it was President Wilson’s stated goal to maintain American neutrality amidst an overwhelming congressional disposition toward isolationism. However, Germany’s increased use of submarines to lethally attack U.S. vessels, which led to the sinking of the Lusitania in the spring of 1915, chiseled away at American resolve to remain neutral. The U.S. made immediate demands for the cessation of unlimited submarine warfare and Germany responded to American protestations by at first suspending its attacks until 1917, when it planned to reinstitute its policy of unrestricted warfare. Germany concluded (wrongly) that the U.S. would enter the war irrespective of its statements regarding neutrality, leading Germany to continue the attacks. The exposure of the Zimmerman letter, the resumption of submarine attacks, and the failure of German diplomacy lead the German ambassador to sever ties with the United States, leading President Woodrow Wilson to ask for, and receive, a declaration of war from Congress on April 6th, 1917.217

The establishment of earlier domestic movements, like the Niagara Movement, and the establishment of the NAACP, were significant to the advancement of fundamental human rights at home. But it was Europe’s disastrous thrust into a World War in the fall of 1914 that stirred and inspired many African Americans to act. Some signed up to prove their patriotism, some their manhood, and

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still others hoped that the earnest display would finally prove to America that African Americans were deserving of full citizenship. Houston was far from naïve, and understood what the war was about, and where he stood in the grand scheme of Wilson’s plan to prosecute it. From his position at Howard University, he waited as the government prepared to raise an army.

Work or Fight

War was going to mean a massive mobilization of the workforce, and the selective service law of May 18, 1917 was meant to enlist 367,710 young African American males to serve in the Armed Forces. Of the approximately 400,000 men who would be called up to serve their country, 200,000 of those would be serving overseas in various capacities. Many would perform as stevedores, working on the docks unloading the endless materials required for war, others joined the labor units that constructed camps, latrines, trenches, and kitchen units, and many would fight in the front lines, primarily with French units.\(^\text{218}\) The summons of that many African American males, however, immediately created concern in the South regarding labor shortages and the increased wages that would follow. Hostility toward black labor leaving the South for better paying jobs in the North was written about extensively in the southern press. An example of those feelings were expressed in Macon, Georgia’s *Telegraph* in November of 1918, made plain that “Police officers, county

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or city, all over the state, all over the South, should be bending every effort to apprehend and jail the labor agents now operating everywhere about us to take the best of our Negroes North to fill the rapidly widening labor breach there... Our whole industrial, commercial, and agricultural structure has been built on a black foundation. It is the only labor we have; it is the best we possibly could have-if we lose it, we go bankrupt."219 There was also great concern, among those in Georgia, who worried over the increased respect that would be granted African Americans in military service, and those working in the war industries. Unlike World War II, the nascent structure of the American military gave each state the mandate to establish draft boards organized at that level. This meant that many who controlled labor withheld the number of eligible African-Americans from the draft, as it was clearly a threat to the status quo.220

In answer to the complaints emanating from southern planters that Congress instituted "work or fight" legislation, Congress' selective service law was amended to allow large agricultural producers from the planter class to appeal drafts of labor, and even allowed "commanders to furlough drafted men for short periods during planting and harvest time."221 This legislation made the federal government complicit in the South's long-standing tradition of labor coercion. Monroe N. Work of the Tuskegee Institute observed that "advantage was taken of the War Departments work or fight

219 Walter Wilson, "Old Jim Crow In Uniform," *The Crisis*, February, 1939, 42.
220 Gerald E. Shenk, "Work or Fight!" *Race, Gender, and the draft in World War One* (New York: Palgrave Macmillan, 2005), 32.
221 Ibid., 34.
ruling in the South ‘to reduce many Negroes to a state of virtual peonage.’\textsuperscript{222} It was nothing more than a capitulation on the part of the government, whose racial and economic interests superseded the nation’s ability to wage war. So successful was this legislation, that many states instituted their own “work or fight” acts. This effectively kept both male and female African-American workers from taking higher paying jobs as they were compelled to work in agriculture. The great migration compounded fears of those in the South, who were already witnessing hundreds of thousands of African Americans leaving for better livelihoods and social conditions. They were fleeing oppression in its many vicious forms, from lynching, peonage labor, and segregation, to harassment, intimidation, and low wages, and “work or fight” legislation was a stop gap measure meant to forestall free movement.

In spite of the military’s history regarding race, there were advantages to joining the army for African Americans. More often than not blacks found the pay and opportunities to be a profound improvement. For example, the War Department offered vocational training at fourteen historically black institutions, covering the cost of education in areas significant to the military. In the first six months of the program, 3,000 men were enrolled in training, and had the war continued there were plans to train up to 20,000 African American men. The available instruction included auto driving and repair, bench woodwork, carpentry, electrical communication, electrical work, gas engine work, machine work, and sheet metal work.\textsuperscript{223} There was also the matter of pay from the War Department; it may not have been free from

\textsuperscript{222} Wilson, “Old Jim Crow In Uniform,” 42.
\textsuperscript{223} Scott, History of the American Negro, 330-333.
discrimination, but “Army pay combined with allowances for dependents exceeded what they (African Americans) could hope to earn picking cotton...”224 The federal government’s opportunities threatened Southern planters’ plentiful labor pool which was already being depleted by opportunities in northern factories and planters would not sit idly by.

As historian Gerald Schenk has pointed out, draft boards were representatives of white, propertied, middle-class progressive values. The draft boards favored landowning, married men, and those employed in "the right kind of jobs."225 Without the government aiding white powerbrokers in the South, many there feared that the existing “racial caste system” would be irreparably harmed. The free market would compel higher wages for blacks, creating greater independence in the workplace, and continued movement out of the south. The use of “work or fight” legislation, at both the federal and state levels, in essence presented African Americans with nothing less than a labor draft.226 It is little wonder then, that those young men of ability and understanding, like Charles Houston, would want to position themselves as favorably as possible.

He was right, of course, and of the approximately 400,000 blacks who served in World War I, the overwhelming majority served in labor units, with only a very small percentage joining the officer corps. Charles’ expectation that he would be drafted was also absolutely correct. The draft board, reinforced the white patriarchal

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224 Shenk, Work or Fight!, 40-41.
225 Ibid., 20-23.
226 Ibid., 33-34.
power structure, which tended to classify men of color as dependents, and therefore more likely to be drafted than their white counterparts. As a healthy, educated, single black man, he would almost certainly have been drafted into the Army.\textsuperscript{227} Between military quotas that pulled increasing numbers of blacks into the military, and work or fight legislation that those remaining to stay and work in agriculture compelled by law, African Americans were increasingly restricted in their movement to pursue labor by the federal government. Compared with earlier actions by state, businesses, and individuals acting to control African Americans, it was now clear that the federal government was stepping in as the central actor constraining blacks in an effort to maintain the status quo ante bellum. The military then, offers a useful glimpse into the nation’s single largest employer of African Americans, the federal government.

In the past, labor disputes surrounding discriminatory behavior by employers were left for the states, and the Supreme Court to define what was legal, and illegal. Here, the federal government, armed with the Fourteenth Amendment, could, with the stroke of a pen, reverse the discriminatory policies of the U.S. Military. Of course it did not take advantage of that opportunity, and as Houston and the hundreds of thousands of African American soldiers found out, the Wilson administration not only continued acts of discrimination in the U.S., they in fact exported their racist policies overseas. These policies were implemented despite President Wilson’s grand claims that the United States was “saving the world for democracy.”\textsuperscript{228} In 1940 Charles

\textsuperscript{227} ibid., 153-155.
\textsuperscript{228} Charles H. Houston, \textit{The Pittsburgh Courier}, “Saving The World For Democracy,” July 20\textsuperscript{th}, 1940, p. 13
Hamilton Houston wrote an autobiographical account of his time spent in the army during World War One over a series of nine entries. He openly admitted in the first installment that he wrote only from memory, without the benefit on notes, or documents. Nonetheless, it reflects his experiences, and provides a glimpse not only of those college educated blacks in the officer corps, but also those who were drafted, or enlisted to serve their country in the first World War. Even so, Charles Houston, like many other African Americans, was hopeful that the United States would change for the better, and he was going to do his part to make that change a reality. He ultimately served from June, 1917 until April 3rd, 1919, with five months of that time spent in France. As he said, “I never got to the front, but I had a continuous battle with America’s race prejudice.”

The Road to Camp

Charles Houston’s involvement with the government and race started almost immediately as he attempted to enter the army. Being only twenty-one, Charles was a bit young for the officer corps; the War Department was seeking men who were capable of leading, and had set a preferred age of twenty-five for officers. From his vantage point at Howard he was aware of the efforts by others to start an officer’s training camp. Joel Spingarn, one of the founders of the National Association for the Advancement of Colored People, also saw the war coming and America’s role in it,

229 Ibid.
so he determined to preemptively start a Negro Officer’s Training Camp in an attempt to sway the War Department. In 1914 there were 14 officer’s training camps, none of which included black officers. 230 Spingarn’s discussions with the War Department were difficult, as they refused to initiate a program under their own auspices, rather they encouraged him to find 2000 college men, and when he raised that number, they would consider his offer to start an officers training camp. Undeterred by the task of finding so many young men, Spingarn turned to the colleges for help and the Howard men were front and center. 231

Houston and his similarly placed colleagues at other black colleges formed the Central Committee of Negro College Men with the intention of lobbying the War Department to accept an officer training corps. It was well understood by all of the men that if left to the status quo, the likelihood of becoming an officer and being granted a direct role in the leadership of men during wartime would be, for all practical purposes, non-existent. That reality and the determination that “they were not going to be herded into the army like sheep,” led Houston to redouble his efforts. 232 Professors, students, and citizens signed petitions, raised money through various fundraisers on campuses, and in general began to apply enough public pressure that the color question began to embarrass the War Department. The fact that there were already fourteen officers training camps for white officers, and none for blacks, became increasingly less tenable. To the best understanding of Charles

232 Ibid., 14.
Houston, there was one example of a black man training with whites; a man by the name of Francis M. Dent (another Amherst graduate), at Fort Myer, Virginia, actually received the same uniform and pay but had to sleep segregated from the rest of the men.233

On May 12, 1917, the War Department finally acquiesced, approving a black officer’s training camp at Fort Des Moines, Iowa, as part of the 92nd Division with a June 15th opening date. That occasion provided an early and efficacious example of the power of political action for Houston that would stay with him over his life, and while it was not entirely what he had hoped for, it was nonetheless a step forward. While the government agreed to allow blacks into officer’s training, there were still two problematic issues for Houston, one personal, and one a matter of principal. On a personal level, he was twenty-one years old and the army was looking for men of twenty-five to forty years. He was not going to leave his admission to luck, and went down to enlist but was rejected, even though his accomplishments clearly pointed to a maturity that belied his years. At the end of the day, he went back with a friend, and he was pleased to find out that there had been a voluntary withdrawal during his absence and was accepted. On principle there was a problem with the segregated nature of the camps, which Charles addressed, stating “Public opinion among Negroes generally, however, was sharply divided over the issue of a separate camp.”234 But understanding the public debate, he and the “Howard men took the position that while they were opposed to segregation the War Department was going

233 Ibid.
234 Ibid.
to put them in separated units anyway, and if they had to be segregated they were
determined to fight all the harder for Negro officers over Negro units."\textsuperscript{235} Having
cleared personal and ethical hurdles, Houston was not going to take a chance, so
rather than celebrating and taking a train with the rest of the officers heading to Des
Moines, he said goodbye to his parents and took an early train, arriving a day early
and ready to start his training.\textsuperscript{236}

Life in Camp

Crediting the Wilson administration for positively addressing the foreseeable
problems of black soldiers, Dean Kelly Miller of Howard University referred to the
appointment by Secretary of War Newton D. Baker, of "special assistant" Emmett J.
Scott, as a substantive move forward.

"Sec. Baker in meeting the impending military emergency has
laid the basis of a broad and far-reaching statesmanship. I have always
contended and shall always contend, that the fundamental grievance of
the Negro against the American people consists in the fact that he is
shut out from participation in the making and administering of the
laws by which he is governed and controlled. It is imposing too great a
tax upon the docility even of the Negro, to make him the victim of
harshly enforced discriminatory laws and expect that he will forever

\textsuperscript{235} Ibid.
\textsuperscript{236} Ibid.
exhibit this patriotism and loyalty with ecstatic enthusiasm and paeans of joy. The race may rest assured that its interests will be looked after and safeguarded so far as the military situation is concerned as long as Emmett J. Scott sits at the council table.”^237

Dean Miller’s optimism aside, life for Houston and the others would consist of daily struggles with racism that impacted both individual morale, and that of the entire camp. The men found the federal government, and the command structure of the military in particular, unwilling to protect African American soldiers from violations of state law while stationed in Des Moines, Iowa. They also found the federal government indifferent to racism in other states, and equally deflating to morale, actively deferential toward the state and local racism leveled at soldiers in uniform. Yet there remained an air of optimism resonating throughout Houston and the other men as prepared to enter the first officer corps.

Camp opened on June 15th, 1917 with some fanfare, and men like Charles Houston had an eager sense of the mission facing the men, who collectively made up the first black officer training corps. As he observed, “The fact that we were the first Negroes being trained by the hundreds to become officers of men might be in our hands made the matter of training a serious business.”^238 So struck were they by the weight of the work involved with their training that many of the men freely participated in extra drills on their own time. Soon, however, it became obvious that

the men were not being given any of the specialized training they would need in artillery and when men inquired as to the reason, they were told that if they didn’t like it they could resign. The only conclusion Houston could reach was that instruction was being withheld because the color of their skin. He surmised, however, that “still it was better to go to war as infantry officers than to be drafted as privates into labor units.”

Riots and Camp

The men of the 92nd Division were not only required to cope with the racialized dynamics of camp life in Des Moines, but also the outside incidences that could, and did, adversely impact their lives. Rioting in East St. Louis and Houston blighted the summer of 1917 with two devastating displays of racial intolerance and hatred. In East St. Louis the riots began over jobs. A series of strikes had disrupted business, and due to the war industries increased need for workers a number of blacks were able to gain employment previously reserved for whites. As the number of strikes increased, however, blacks were also hired as strikebreakers, setting the city on edge. The city of St. Louis exploded in July, and deteriorated into an anarchistic blood bath with police abdicating their responsibilities at the local, state, and federal levels. The President of the United States ignored the matter until it was too late, demonstrating for the nation, that African Americans could not depend on the law at

239 Ibid.
any level, nor President Wilson despite his speeches suffused with the rhetoric of freedom.

Reactions to the riots nationally were mixed, reflective of the racial animosities that had been boiling over for some time, and were magnified by the oratory of a nation at war. In a meeting at Carnegie Hall on July 17, 1917, Samuel Gompers denigrated blacks for their roles as strikebreakers, and Teddy Roosevelt sprung from his seat to admonish Gompers. Waving his finger at the speaker, he said that “Murder is murder, whether white or black. I will never stand on any platform and remain silent and listen to anyone condoning the savage and brutal treatment of Negro strikebreakers.”

In Harlem on July 28th, 1917, a silent march took place comprised of men, women, and children wearing placards. One read “We march because by the grace of God and the force of truth the dangerous, hampering walls of prejudice and inhuman sacrifice must fall.” Another proclaimed “We march because we want to make impossible any repetition of Waco, Memphis, and East St. Louis, by arousing the conscience of a country, and to bring the murders of brothers and sisters, and innocent children to justice.”

Not only would no real justice be won with those riots, but within weeks men in uniform, preparing to fight for freedom, would become embroiled in another uprising, this time in Texas.

The riots in Houston would have an impact on the morale of the 92nd, and also help shape why they were fighting the war in the first place. It was during the second

240 Nelson, A More Unbending Battle, 27.
241 Ibid.
242 Ibid.
month of camp that the rioting in Houston occurred. It was unfortunately still the practice in the South that during preparation for the war, to accommodate southern white expectations. Thus it was that the military police were determined to disarm a battalion of infantry that had been sent to Houston. For their part according to Houston, "The Houston police undertook to put Negro soldiers in their place and show them that uniform or no uniform they were still quote "niggers" and were to be treated as such." As a result there were a number of flare-ups, and on August 23, 1917, the military police assaulted Corporal Charles Baltimore, who was simply protesting the mistreatment of an African-American woman. After Corporal Baltimore was beaten and thrown in jail, rumors that he had been killed began to circulate, and a detachment formed by "non-COM officers and started to town to avenge him, and killed a score of white persons before returning to camp." One soldier remarked “to hell with going to France, get to work right here.” The result of this confrontation was the disarming and arrest of 120 African American soldiers, nineteen of whom were ultimately hanged, fifty received life sentences, and others shorter terms in prison.

It was difficult for Houston and the other men to comprehend why the military had sent these men into a hornets’ nest in the south for no particular reason, and without the proper protection. The men of the Ninety-Second were without question

dejected over the decisions of the War Department, because it was ultimately their orders that sent those men into Houston. From the soldiers’ point of view, the War Department had sent these men "Into a nest of prejudice, and then not standing by to see that they and the uniform were respected." Their reaction, however, was tempered by a sobering reflection on the actions of those who had taken part in the actual riot. The men in camp realized that the soldiers who had mutinied should be punished, but questioned the ultimate justice that the accused men had received. This was due in part to the realities of their own experiences with racism in the American justice system, and the burgeoning reality that the federal government was unwilling to use its power and constitutional authority to protect black men in uniform.

Examples of the federal government's intransigence towards protecting the civil rights of its soldiers in uniform were readily available. While stationed in Iowa, men from the camp had been involved in a brawl at a Chinese restaurant at which they were refused service because of their color. The men in uniform were justifiably offended by the fact that they were being denied their rights as citizens in Iowa. Oddly enough, while much of the country was fully participating in the extension of Jim Crow, Iowa had placed a law on the books outlawing discrimination in public accommodations. The case, Coger v. The Northwestern Packet Company in 1873, involved an African-American teacher who had purchased a ticket to travel from Keokuk, Iowa, to Illinois. When it was discovered she was dining with whites, the woman was forcibly removed, and reportedly yelled "Unhand me." The case moved

246 Ibid.
247 Ibid.
its way up the court system, finally reaching the Iowa Supreme Court, which decided clearly in her favor, noting that blacks had the same rights as whites in public accommodations.\textsuperscript{248} Since eating in a restaurant is clearly a public accommodation, the soldiers were rightly mystified about the federal government's failure to protect their rights.

The military's response to the brawl was completely unsatisfactory to the men in camp. Colonel Ballou explained during a meeting concerning the event at the restaurant, that the training of black officers was an experiment, and, if they wanted it to continue, the men would have to "stay out of any place where our presence, right or wrong, might cause friction."\textsuperscript{249} This was reinforced by Army Bulletin 35, which was issued after a sergeant entered a theatre, causing a scuffle. It declared that "entering a theatre admittedly within his right...Nevertheless the sergeant is guilty of the greater wrong in doing anything, no matter how legally correct, that will provoke race animosity."\textsuperscript{250} Painfully obvious to Houston and his comrades in arms was the fact that the federal government was unwilling to advocate on their behalf, and in fact actively aided in discrimination against military men while training in Iowa. This circumstance, coupled with the War Department's refusal to investigate the Houston Police Department, caused morale in camp to descend to a new low point.\textsuperscript{251}

Despite Col. Ballou's response concerning the brawl at the Chinese restaurant, it did not speak to what it meant for an African American to wear the uniform of the

\textsuperscript{248} 37 Iowa 145 (1873).
\textsuperscript{250} Nelson, A More Unbending Battle, 32-33.
U.S. Did the federal government not intend to protect its men in uniform from its own citizens? The answer came from the Inspector General, who declared that the only purpose was to win the war and race would not be allowed to get in the way. It was made clear by the War Department that "it could not have its war effort crippled by racial disorders, and that any of us who did not feel that regardless of provocation we could suppress our indignation and concentrate our efforts, singly on winning the war should take off our uniforms and go home." The government, it seems, was only capable of confirming the men's worst fears regarding their treatment as men on an equal footing with whites in wartime. Their own government would in fact defer to the racist conventions of the time to avoid the conflicts that would accompany insuring the Constitutional rights of all its soldiers.

According to the original understanding of those who had enlisted in the officer's training Corps the camp was to close after 90 days (September 15, 1917); however the camp's training deadline was extended, causing many of the candidates who were upset to resign due to the lack of any explanation from the government. The real reason for the camp's extension was known by the men, and articulated by Charles Houston when he stated that "the true reason the war department held us in camp an extra month before giving us our commissions was that after the Houston riots, it decided not to call any Negro draftees until the white draftees were first inducted, organized, and under arms."
It was the belief of Houston as well as of the soldiers that he served with, that the War Department did not want black soldiers idle. This resulted in the second significant effect of the Houston riot, which was a decision by the War Department that there would be no large concentrations of African American troops in America. For example, the 92nd division, an all African American division, never assembled in the United States in its totality. The War Department even came up with a ratio to which it adhered, six white soldiers to every black soldier in camp. Why? Houston concluded "if for any reason racial friction should break out the Negro soldiers could be smothered by the weight of numbers."\footnote{Ibid.}

In spite of all of the frustrations of camp, on October 15, 1917, the officers were finally given their commissions. According to Scott's \textit{History of the American Negro in the World War}, of the 689 officers that graduated at Fort Des Moines, Iowa, there were 106 captains, 329 first lieutenants, and 204 second lieutenants.\footnote{Emmett Scott, \textit{Scott's Official History of the American Negro in the World War} (Homewood Press, 1919), 90-91.} In receiving their travel orders, many black officers were assigned to units for which they had received no training. For instance, even though an officer was trained in artillery, they may have found themselves among engineers, or even the Signal Battalion. They found themselves held in camp, while their transfers were refused until they ultimately failed. Then, those examples of officers who had failed were used by white officers, to argue against blacks in the military altogether.\footnote{Charles Hamilton Houston, "Saving the World for Democracy," August 10th, 1940, 13.}
altogether frustrating experience but Houston was elated to be a commissioned officer in the military, and looking forward to his next stop, Camp Meade Maryland.

Camp Meade Maryland

After arriving in camp the men were rudely awakened to their new reality. The 368th infantry, of which Charles Houston was a part, and the 351st Field Artillery were both comprised of African American soldiers. The 368th infantry included black officers through the rank of captain, while the 351st Field Artillery had all white officers, which ran contrary to the understanding that many of the black officers had regarding leadership positions in the war. Many had looked forward to black officers commanding black troops. It was not to be, however, and troops were segregated with one exception, and this one exception was, as Houston felt, a slap in the face of black soldiers. White conscientious objectors were housed with black conscientious objectors in the African American 368th infantry's area, leading Charles Houston to observe that "the Army considered conscientious objectors as cowards and scum," and it was an insult to house them with the black soldiers.258 Houston noted "I had to pass this ‘conscientious objectors’ barracks at least eight times every day and I never passed it without resenting this gratuitous insult to Negro officers and Negro fighting men."259

258 Ibid.
259 Ibid.
Additionally, there was almost no contact with white officers, which led to a number of inefficiencies within the military. Black officers were assigned based on their race to units where they had little or no training, which naturally made absolutely no sense to any of the officers, in particular Charles Houston. In his opinion, the better educated should have been placed in artillery because of the extensive training that they had undergone. Consequently, the less educated should have been assigned to the infantry. In reality the military already had an established labor hierarchy, and it was certainly driven by race; the better educated were officers, followed by skilled mechanics, semiskilled positions, and lastly the labor units which were disproportionately occupied by blacks. Houston musing about the possibilities of why the 92nd was so mishandled, took a moment to reflect, stating that "I wonder if the explanation is that the Army and was callously indifferent whether the Negro combat division was a success, whether most of the high command was a viciously hostile as the Divisional Chief of Staff, Lieutenant Colonel Greer, or whether the Army was just plain dumb-or combination of all three."260

Despite Houston's thoughts regarding the high command, African American experiences in Camp Meade were mixed, particularly within the white officer corps. White officers serving with the 92nd division had had previous experience with African American troops, and as a result Houston and others found their interactions to be on the whole positive. However, white officers with the 368th went badly, due in part to their lack of experience. In fact, "one officer, Capt. Malone, one of the

260 Ibid.
youngest and most gentlemanly Army men commissioned at Fort Des Moines,
committed suicide in protest at the treatment meted out to the Negro officers."\(^{261}\)
This was of course a tragic accident and there is no accounting for how often it
happened, but the fact that Houston observed such an incident within the relatively
small group of men that he served provides a sharp measure of racism's impact in the
military.

The 368th was wrecked, according to Houston, by the white officers' inability
to empathize with fellow soldiers who were black, and he was removed from a bad
situation by a timely transfer out of the 368th in May of 1918. When he next saw his
regiment again in France, the enlisted men were sharp and in shape, but the officers
looked, in his opinion, downtrodden. This was due to the fact, he would learn, that six
of the men had been prosecuted for "retreating in the face of the enemy... to cover up
the cowardice and stupidity of their white Battalion Commander."\(^{262}\) Houston even
had a later conversation about the incident, noting that after the discharge, one of the
officers went to the War Department, in order to give his full account but the report
was buried, never again to see the light of day. As Houston would later learn, blaming
poor outcomes on black soldiers was not a singular event in France. White officers,
by their many actions, appeared to be ashamed of serving with black officers.

While in France, divisions were allowed to choose an emblem to place on
their arms, to foster a certain esprit-de-corps; the 92nd chose the buffalo. Charles

\(^{262}\) Ibid.
explained, the "buffalo emblem goes back to the Indian wars, the Indians called the old Negro regular cavalry men buffaloes in recognition of their stubborn courage in fierce fighting spirit." Much to his shock and dismay, the white officers actually refused to wear the buffalo, and instead wore "The emblem which Hitler has since made famous, the swastika." The 92nd was the only division that did not act in unison, yet the command did nothing. Here, it appears that Houston has taken the selection of the swastika to be directly linked to the racialized Nazi version from the 1930s.

In fact, the swastika was used by the 45th division from Oklahoma to recognize their Native American heritage. American Indians had long used this symbol as a representation of good luck. Eventually the 45th division’s diamond-shaped patch featuring a red background with a swastika was abandoned heading into the 1930s, as the Nazis co-opted their symbol. The red diamond later went through one more transformation into that of the Thunderbird to avoid any confusion. It appears fair to say that Houston had inaccurately transferred an understanding of the symbol’s racial intolerance in 1940 to its understood iteration of 1918. Nevertheless, one is left to conclude that the white officers rejected the symbol chosen by the 92nd division in a conscious effort to maintain a separate, segregated identity from the predominantly black division. As disturbing as the rejection by the white officers

\footnote{263 Ibid.} 
\footnote{264 Ibid.}
was, the response from their commanders was equally disheartening, as they chose to ignore the snub, and allow the separate emblem to remain.\textsuperscript{265}

Army Justice

As the Thanksgiving holiday of 1917 rapidly approached, the men were excited to get their first leave from Fort Meade and Houston as well as others looked forward to the time with their families. Time at home for any soldier is a precious commodity and the fact that this was a holiday made the time pass even more quickly. For the return trip home, the military had supplied a train that ran from Philadelphia back to Fort Meade. It was on this return trip that a chain of events occurred leading to one of those transformative moments in Houston’s life to that point from his experience in World War I. Though previously ambivalent regarding his career, the ensuing events propelled him towards the direction of a career in the law. Charles had seen plenty of incidences in his short time in the military that caused him to question justice, but a special appointment by his commanding officer placed him squarely in the arena of the law. That firsthand experience would prove to be both inauspicious and seminal in the maturation of Charles Houston’s world view.

Trains were the centerpiece of transportation in the 19\textsuperscript{th} century and in the young twentieth it was still true, bringing people in varying circumstances together in a central gathering point. On this occasion soldiers were returning home after the

\textsuperscript{265} Ibid.
holiday and although all the majority of the men on the train were African-American, the officers and guards were all white. The incident that ensued involved "one of the G. company men much too drunk to fight, but not too drunk to argue, picked a quarrel with another G. company man in the seat behind, stood up and dared the other soldier to step into the aisle." The guards were quick to react to the incident heading into the car, and by the time they had gotten there a sergeant had stepped in between the two men who are argued attempting to convince them to sit back down and avoid any trouble. As the officers approached him, the sergeant tried to explain to the guards that he was breaking up the fight, but the guards would have none of it, and arrested him for insubordination.

Houston understood that there are three kinds of courts martial in the military, and they are important to know for any man in the military so that he knows exactly where he stands. The first is a summary courts martial, and those courts deal with petty offenses, and headed by one officer. The second is a special court-martial, which includes a minimum of five officers, addressing medium offenses resulting in a loss of two thirds of the pay and perhaps six months in prison. The third, and most serious courts martial, is a general court-martial, where a soldier could receive up to the death penalty.

Unfortunately for the sergeant who was accused, he faced a group of all white officers in a general court-martial, where he received a very harsh judgment. It included having his rank busted, losing two thirds of his pay, and sentenced to one

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year in prison. All of this despite the testimony from the other soldiers on the train that day that he was not involved in any of the altercation. Also, on his behalf, the company commander explained to those officers sitting in judgment, that the sergeant was merely keeping his orders to keep the men from getting into any trouble on the trip home. In a final vouchsafe he testified that the sergeant was one of his best men. 267 To add insult to injury, the second lieutenant involved in overseeing the train ride home, gave a signed statement and was never even cross examined, which meant that the sergeant was never able to face his accuser. This injustice provided an insight to Houston regarding the difference that class and race that had escaped his earlier years. As Houston observed, "In civil life, the very foundation of our criminal system rests on the right of the accused to face his accuser and cross examine him. But in the Army it was otherwise." 268

The other two men involved in the incident received a special court-martial. The second type of courts martial, however, it was created by the 368th, and there were three black officers hearing the testimony. It was during the proceedings of these two men, that Charles Houston would get his first, though inauspicious, legal experience. Like many occurrences in life, it is difficult to decipher in that moment whether an experience will have a seminal impact, or hold only fleeting interest. This experience however, would touch not only his life, but the lives of those he would serve later as dedicated his life to the law and helping working people.

267 Ibid.
268 Ibid.
Houston was offered the opportunity to serve in the position of judge advocate, in essence, the prosecuting attorney representing the military's position. He later noted that "I was proud of the appointment, and took it seriously. I had not studied law, when I went into the Army, but I prepared the two cases as thoroughly as I could."\(^{269}\) As he progressed in the case, it became eminently clear to Charles Houston that one of the men was clearly not guilty. And as it turns out, that is exactly what the officers in judgment thought, and in the end the man was acquitted. Houston's first foray into the law resulted in a defeat, and given his feelings regarding the evidence, rightly so, but he was certainly not ready for the response of the military.

As he prepared to interview the commanding officer who had arranged for the special court-martial, he thought he was ready for what the response of his commander would be, but he would be let down again by the conduct of his superiors. As Houston was sitting down with the commanding officer, he explained that he had interviewed everyone, and there was simply no evidence that the acquitted man was guilty. After listening to Houston's explanation, the white Regimental Adjutant let Charles know, in no uncertain terms, that the colonel was not happy with the outcome. "He said the Colonel was not interested in the evidence; he had wanted to teach the Regiment lesson, out of this affair, and when he found out the soldier had been acquitted, was sure to give us hell."\(^{270}\) Unfolding as life does, the regimental adjutant was indeed prescient in his understanding of the Colonel's response. The

\(^{269}\) Ibid.
\(^{270}\) Ibid.
colonel, when Houston met with him, was not interested in hearing any excuses about a lack of evidence and did not want to hear any explanations for the reason that they lost. He, for example, asked Captain Sanders, who was one of the four officers, "why the captain thought he had created a special court-martial to try these two soldiers if he had not wanted them to get six months each." Following from that interview Houston was shocked to find out that he was fired, and that the sergeant was stripped of his uniform, forced to wear blue denims and sent to the stockade.

The incident caused Houston to think very seriously about the sergeant who had been sent to the stockades and even though it was against the rules to speak with prisoners in the stockades, Houston mentioned that "every time I could get near him, I would say cheer up." Reflecting on the convicted soldier, and his own life at the conclusion of the case, he thought to himself, "I do not know what went through his mind during those days, but I made up my mind that I would never get caught again without knowing something about my rights; that if luck was with me and I got through this war, I would study law and use my time fighting for men who could not strike."
Decisively, the election held in 1912 placed a President in the White House who was more than willing to accommodate southern sentiments toward the role of race in the United States. Woodrow Wilson’s administration failed to secure the legal rights of African Americans at every level of the law; from local, to state and federal, as well as in the military, as was its fundamental, moral, and constitutional obligation. Where laws already guaranteed equal access to restaurants and other public accommodations, as the laws in Iowa required, Wilson’s administration allowed prejudice to trump the rights of black officers in the military. Historian Stephen G.N. Tuck has observed that “If southern Democrats feared black soldiers, the thought of black officers made them apoplectic.”274 It was this apoplexy regarding race that in part accounts for the Houston riots, and the federal government’s willingness to ignore federal law. Instead it deferred to Texas law enforcement which instigated violence against men in uniform during a time of war. In its largest abrogation of Constitutional responsibilities, Wilson’s administration cultivated racialized policies domestically, and making a mockery of the term democracy, exporting race even as it advertised that it was prosecuting World War I to “Save the World for Democracy.”

A commodity is something of value, or, alternatively, “one that is subject to ready exchange or exploitation within a market.” For the United States in World War One, race was the commodity that the government was unwilling to have compromised, or devalued in any way, that would endanger existing legal, labor, or social norms after the war. To that end, it exported America’s particularly virulent form of racism overseas in an attempt to maintain its value back home after the war. The federal government juxtaposed to the states in previous domestic scenarios concerning race, labor and the law, had not been the actor per se. Rather the common refrain was that the federal government was precluded from acting due to constitutional proscriptions defined by Plessy. That position however, belies the vested interest the federal government had in maintaining the existing racialized caste system that supported the political and economic structure at home, both during, and after WWI. Any attempts by allies abroad to undermine that system were met with direct efforts to keep the United States’ brand of racism undiluted, in order to retain its value. As will be demonstrated, the military catered to the co modification of race beginning with its earliest preparations for the war.

Its own military code of conduct was ignored, and African American soldiers were singled out for false prosecutions as witnessed by Charles Houston, and law enforcement repeatedly looked the other way, ignoring countless crimes against its own men in uniform. Additionally, the issuance of Special Order #40, outlawing contact between black soldiers and French women, coupled with the initiating of the “whispering campaign” amounted to the exporting of racism, as offensive a
circumstance as African Americans could have imagined. For these, and countless other reasons, the breach between the rhetoric of democracy, and its actuality, inspired many returning veterans to prepare to change American culture and law in a more active manner. Whether it was through the joining of organizations like the NAACP, the Urban League, UNIA, unions, political parties, or cultural and Intellectual endeavors to enrich the of African Americans, there was a new and vibrant atmosphere emerging.

As black officers continued their training, they faced unremitting discrimination while they prepared to be deployed overseas. Adding to the anxiety of the soldiers was the fact that they were unaware of where, exactly, in France they would be deployed. Fully aware that the World War would demand that they be as skilled in their duties as possible, they were left wholly unsatisfied with their training and its ability to help them conduct war. Black officers had found themselves placed in the position of being reviewed for their performances, without ever having received the standard training offered to their white counterparts. Joel Spingarn had begun to put even more pressure on the war department, but was gaining little headway, when he found a helpful emissary in Dr. Emmett J. Scott, who was special adviser to the Secretary of War. An African American, Scott quickly set out to rectify the grievances from the officers regarding unfair performance reviews that had resulted from inferior or nonexistent training due to race. Scott demanded, "The Negro lieutenants assigned to the 349th and a 350th field artillery direct from Fort Des Moines, with absolutely no field artillery training, begin real field artillery training
before being placed before trial boards for inefficiency.\textsuperscript{275} What Scott asked for, and ultimately received from the Secretary of War, was a correction of the scandalous treatment. The victory represented a brief moment of light among the many disheartening experiences, and Dr. Scott remained throughout the War, an advocate for the rights of black soldiers of all ranks.

Houston and others found themselves placed in new training facilities, and while they were faced with discrimination, not every experience was negative. In fact, there were moments of interracial cooperation as they began their new training in artillery. Houston commented on the fact that he "served with whites without friction," and that some from the 349\textsuperscript{th} and 350\textsuperscript{th} were allowed to go to Fort Sill, Oklahoma for training, and would be allowed to return should they pass. "They served efficiently and harmoniously in the same batteries with white lieutenants, in spite of the war department's propaganda declaring that white and Negro officers cannot be mixed in the same command."\textsuperscript{276} By mid spring 1918, Charles Houston and his fellow officers were allowed to enter artillery school back at Fort Meade, Maryland. Adding to the disappointment felt by Houston and others was the realization that their experiences were also the result of the government itself acting against their interests. Racism directed at them from whites in uniform was one thing, but their sense of disappointment was magnified, as the government rigged assessments were continually used to unfairly cut black officers from the training

\textsuperscript{275} Charles H. Houston, "Saving The World For Democracy," \textit{The Pittsburgh Courier}, August 31, 1940, 13.
\textsuperscript{276} Ibid.
corps. For example, some who tested at Fort Sill found the tests to be rather easy, and yet they never heard from the Army. Still others took the elimination exams at Camp Meade, and felt that the tests were unnecessarily difficult, and far exceeded any reasonable requirements necessary for someone in field artillery. As a result, of the 400 officers who were tested, only 96 qualified; Charles Houston was one of these.\footnote{Ibid.}

Embarkation orders for the 92nd were issued, but Houston was still in school, requiring him to remain in camp. Unfortunately, he did not see the men with whom he had begun training until after the armistice, while he was stationed in France. During the interim, however, while he was still in training at Fort Meade it was important for Houston to fraternize with other black soldiers. Since the other officers had shipped out, he was left with the options of either spending a great deal of time alone, since officers could not fraternize with enlisted men, or he could choose to forego wearing the officers’ uniform. So, even though he had been commissioned as an officer and was paid his rank, he chose not to wear the uniform he had earned. It was not difficult decision for him, and socializing with the enlisted men certainly turned out to be the wiser choice.

Charles Houston was never caught up in the exclusivity associated with rank, cultivated by some men in uniform, and did not buy into the elitism associated with some in the officer corp. Early on in his adult life he demonstrated an appreciation for the commonalties that bound human beings together, including the significance of his own involvement in the intersections of history and human action. Houston’s
experiences with working class enlisted men during the war continually expanded and reinforced his understanding of the universality of the struggle, and the shared aims of man. While he was at Camp Meade in Maryland, Houston warmly recalled in 1940, "the men in school were some of the finest men I have ever been privileged to associate with." 278

He was surprised to find that the military was changing its policies for a third time. This time the way the military trained men was shifting from a decentralized strategy to the use of "great centralized camps, each camp, concentrating on one branch of the service." 279 As a result, Houston was now shipped off to Camp Taylor Kentucky, outside of Louisville, as part of the 22nd Training Battalion; of the over 4000 candidates, his was the only battery comprised of African Americans. Americans were pouring into France, the pace of training quickened, and although the 22nd battery, which was entirely African American, was half the size with only 200 men, their battery’s workload was the same as all the others. It was of little consequence to dwell on it though, as Houston said, "Our motto was twice as fast and twice as good." 280 Segregation didn't end in the new camp either, but there were, as evidenced by brief moments in the history of race relations, moments of hope created by interracial cooperation in France. Houston noted, "our student instructors went to classes with the white student instructors, and nobody thought anything about it." 281

So, while there were moments of interracial cooperation, in matters concerning the
closest proximity, the sharing of barracks, for example, separateness was still the rule. But it didn't matter to Houston because he and his comrades in training were, after their long sojourn, preparing to graduate. He witnessed the graduation with a great deal of pride and satisfaction. It was also noted publicly by the Louisville Courier Journal, which mentioned that "a mighty cheer was given the Negro honor students as they were called from the 22nd battery, the five Negroes marched in perfect step."\textsuperscript{282}

There was no time to savor the moment however, as almost immediately upon graduation the men were sent off to South Carolina and Camp Jackson, where from Newport News they would prepare to set out overseas to France. Dispatched to Newport News, the black officers were removed from other white officers who were also being deployed, and traveled as an independent group of thirty-five men. "From that moment we became the unwanted stepchildren of the Army. Nobody wanted 35 Negro field artillery lieutenants to help win the war." Houston had inadvertently hit on a theme often experienced by African Americans in the World War reflected in a number of books published using the term "orphaned," "foreign," or "unknown," to denote the superfluous manner in which black troops were treated.\textsuperscript{283} The War Department would rather have given these capable men nothing to do, than run the perceived risk of having black officers oversee white soldiers.

Disembarking in St. Nazaire, France, the soldiers found themselves men of leisure, as upon their arrival, they were given no substantive duties, and after one

\textsuperscript{282} Ibid.

\textsuperscript{283} See, for example, Arthur E. Barbareau's, \textit{The Unknown Soldiers: African American Soldiers in World War I}, or Peter N. Nelson's, \textit{A More Unbending Battle: The Harlem Hellfighters' Struggle for Freedom in WWI and Equality at Home}. Both books address the abandoned feeling, both literal and figurative, experienced by African American soldiers in France.
week they were sent down to a camp south of Bordeaux to await further orders.\textsuperscript{284} While in camp, the fate of the previous occupants was revealed to them as they were regaled with a story detailing the turmoil that flared up among the ranks as international occurrences turned friends into foes, resulting in a horrible act of vengeance. As the men learned, Russian soldiers by the thousands stopped fighting wherever they were across Europe, and the camp they were occupying was one of those locations where Russian soldiers had refused to continue their fight. French soldiers apparently exasperated by this turn of events reacted swiftly and mercilessly toward their Russian counterparts. Houston was told that "The French had lined them up before their barracks and turned their machine guns on them. The bullet marks were on the barracks walls when we got there."\textsuperscript{285} However unsettling that may have been, camp life moves quickly, and the men prepared to be reviewed and receive the proper artillery training that many had been denied back in the U.S. The Russian Revolution was read about with some interest, but there in France, Houston and the others were exposed to the impact of the Russians' formal withdrawal from the war. There in France, the brutality of war was on display for those who would not see battle themselves.

Houston and the men with whom he served did not see battle, but thousands of other black soldiers did, and accounted for their service as well as anyone, numbering among the many who were rewarded for their meritorious service. Here, the projection of race supplied many military leaders with a new and disquieting

\textsuperscript{284} Ibid.
\textsuperscript{285} Ibid.
image that made them reluctant to allow African Americans to fight on the front lines. Unlike 1898, when black men took up arms against other men of color, the thought of armed black troops fighting white, westernized men, alongside white soldiers was the cause of heightened anxiety among the Anglo leadership. French military leaders, however, had no such reservations as they were in desperate need of more men trained to fight. Because black soldiers were not going to be used for fighting General Pershing was willing to loan them to the French who were more than pleased to accept black soldiers, so the African American units were brigaded with the French. The 369th, 370th, 371st, and 372nd, among others saw action, and from all accounts escaped the prejudices that permeated the American forces. The loaning of African American troops has led historian Frank Roberts to observe that black troops accounted for "the American Foreign Legion." The brigading of black units with the French led to and heroic first. Henry Johnson, an infantryman from New York was the first American, white or black, to receive the Croix de Guerre as a member of the all black 369th infantry. When given the opportunity to fight black soldiers were involved in major actions across the western front bringing home high expectations of reform born of the heroism of war.

In spite of the efforts and recorded heroism of African American soldiers in France prior to the arrival of Charles Houston, the men would again be confronted with the stigma attached to race. When white officers in France discovered that

Houston and his colleagues were black, their planned training was revoked. This resulted in more downtime for Houston and his comrades, as they were preparing for whatever France would bring them, perhaps even the action of battle. As they waited, they received orders to move yet again; this time they would return to within 60 miles of where they had originally been deployed in France. During that time, because they had no official duties, they could come and go as they pleased from camp, as long as they kept their noses clean. The upper echelon of the American command structure in France made it clear that they wanted its officer personnel of color out of sight.  

The Military’s Exportation of Race

To begin, as World War I was being fought by the worlds’ powers, the United States began to formulate a draft, policy should the U.S. enter the war. What is not usually considered in histories of WWI is that this circumstance put the federal government in the position of being the single largest employer of African Americans. The military paid better wages than most blacks could earn in the public sector, while also positioning the government to direct policy regarding race and labor in the services. Appreciably too, the numbers of blacks serving in the armed forces totaled nearly 400,000 by the end of the war, and plans were made to educate primarily black males in much needed trades. So while there was a labor component

288 Ibid.
Prior to the outbreak of the Great War, the states had been the perpetrators of unjust racialized policies, while the federal government remained in the background, largely mute, due to the claims of Plessy and a largely southern articulation of states’ rights. The Government’s position had been established by Cruikshank which established that the federal government could not intercede in states to stop individual acts of discrimination. Thus the safety of African Americans became the exclusive responsibility of the states, except in those instances when a state was the actor. However, with the outbreak of the war, the federal government with its emergency powers was uniquely positioned to secure the constitutional treatment of minorities under its control. This is why many black men who signed up for a chance to fight for freedom were hopeful that the laws of the federal government would be observed with regard to race, assuring their recognition as full citizens, as they went off to fight to secure those rights for others.

Not all men were as confident about the government anteing up in the area of rights, as African Americans in the military exercised a healthy skepticism, mixed with their patriotism. Houston, too, experienced an abundance of disappointment regarding the actions of the government, with many of his contemporaries expressing a reticence about diving into the trenches of Europe. Writing his recollections of the war for the Pittsburgh Courier recalled that, "Camp Mencou and Vannes destroyed the last vestiges of any desire I might have had to get into the front lines in battle for
my country. Woodrow Wilson's appeal that America was in the war to save the world for democracy had left me absolutely cold because I know that black men had no place except as laborers in his scheme of things." Houston was also developing a keen collective awareness that informed his sense of international motivations, and their repercussions for people of color more globally.

Surveying the political landscape, he noted that "the English to me were a nation of snobs fighting the Germans to keep them from interfering with English exploitation of colored peoples. The French were sore because they had been beaten in 1870 and had lost Alsace-Lorraine. The Belgians deserve anything they get for what they had done to the natives in the Congo. The Italians were double-crossers. The Russian Empire was prostrate from internal corruption. And we were in the war to save our credit and to prevent Germany from getting loose in Europe, and paying us back for our aid to the Allies." At a young age Charles Houston demonstrated deft insights concerning international diplomacy and the politics that had moved nations toward the war they were all now fighting.

With his broadened understanding of the world, and his place in it, it should have been no surprise that he had formulated thoughtful reasons why he should join the Army as an officer rather than waiting to be drafted. As he took stock of his experiences at the end of the war he noted first that he was twenty-one years old, single, and in good physical condition. Second, he was chairman of the Publicity

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290 Ibid.
Committee of the Central Committee of Negro College Men, which brought with it a certain moral obligation to follow through on the agenda that he had helped to decide. And lastly, he stated that "I was determined that if I lived I was going to have something to say about how this country should be run and that meant sharing every risk the country was exposed to." However, just as his observations regarding the status of international motivations represented his life's observations, so too, was his consideration of where his place in the military would be if left to the winds of chance. He would not leave such a decision to the whims of a draft board given his experiences.

Absent naivété, and fully possessing a realist's perspective, Houston was eminently disappointed by his experiences in France. To begin with, as the men were coming together to confront a common enemy, Houston was ardently aware that this meant not only Germans, but also at times, his own government. For example, on many occasions the Army violated its own procedures by forcing black officers to share quarters with white enlisted men. To Houston and many of the other black officers this was not a matter of class snobbery, or looking down their nose at enlisted men. Rather, they accurately read the intended insult on the part of the Army, and fully felt its sting. Charles commented almost matter-of-factly, "...just noting the fact that the treatment meted out to us violated every principle of Army regulations. Army procedure and tradition and was visited on us solely in an attempt on the part of the white officers to humiliate us and destroy our privilege as officers in front of the

\[291\] Ibid.
French instructors, the white soldiers, and even the German prisoners because some
German prisoners working around the latrines told us the propaganda the guards were
spreading against us and the excuses they gave them for the fact that we were dressed
in officers uniforms.\(^{292}\)

The Army, according to Houston, was purposefully diminishing the
status of black soldiers, not only in eyes of white soldiers, and the French, but
astonishingly in direct contravention of their own code of behavior. Though,
relations between the black officer corps and the people of France were
cordial and in good standing, it was becoming evident that there was a change
in the demeanor and conduct of the French. In the hotels, where previously
access had been unlimited, reserved signs began to appear in hotel doors, and
on tables in restaurants. Some of the signs read booked for private parties, and
even the Red Cross would not let blacks in the front rooms any longer,
contrary to the receptive treatment African American troops had received
earlier. Charles himself hadn't thought anything particularly sinister about
these events, until one night a waitress stormed upstairs where black officers
were now told they had to sleep, and was visibly upset.

The waitress involved told her story to Houston and the men, and as he
recalled, "It seems that at dinner she had a party of white officers who insisted
on patting her on the legs as she moved about the table. She said the white
officers tell us we cannot be nice to you because you will misunderstand and

\(^{292}\) Ibid.
try to take advantage of us, and they say that if anyone of you makes the first
gesture towards us, all we have to do is scream and they will run upstairs and
protect us; that that is the way white men had to protect white women against
Negroes in the South; but I feel safer out here under the roof, with you than I
do in the dining room with some of them.²⁹³

As it turned out, Houston’s suspicions were well founded. There was in fact a
concerted effort to alter the existing social etiquette, as well as the political economy
of France, so that it would mirror the worst practices of the United States. General
Ballou in charge of the 92⁰ was replaced by Brigadier General James B. Erwin on
December 16th 1918. He was concerned that the black troops in France were being
treated too equitably by those in the military as well as civilians, and that this would
not bode well for race relations after the war. To end what he saw as an unacceptable
condition of equality between whites and blacks, Brigadier General James B. Erwin
issued General Order No. 40.²⁹⁴ Order Number Forty was issued to all military
police, stipulating that black soldiers could not speak to, or fraternize with French
women. The military police were, as a consequence of the order, permitted to arrest
African Americans, while in practice, leaving whites free to their own prurient
interests.²⁹⁵ This circumstance was yet another illuminating the lengths to which the
military would go to impose a caste system identical to that of the south, in France. It
clearly avoided, Houston observed, merely following prescribed military law, and

²⁹³ Ibid.
²⁹⁴ Chad Williams, Torchbearers of Democracy: African Americans Soldiers in the World War One
Era (University of North Carolina Press, 2010), 194.
²⁹⁵ Scott, History of the American Negro, 442.
instead chose to discriminate against its own men. This was not the first time that the military cast aside its code of conduct. For instance, there had developed a very clear pattern on the part of the War Department to turn its sympathy for racist elements within the military into policies contravening the egalitarian treatment that black soldiers were receiving in France. The Army crafted official policies to make sure that not only the US military discriminated against African Americans in uniform, but that its European allies would do so as well.

Special Order No. 40 was accompanied by what many referred to as the "Whispering Gallery," a covert campaign on the part of the military to convince French officers that they and their men should avoid any demonstrations of equality towards African American soldiers in uniform. The "Secret Information concerning Black American Troops," was disseminated August 14, 1918 to French officers who were then expected to dissuade their men from fraternizing with black soldiers. It is salient that the American military felt compelled to instruct a foreign power to discriminate against African American soldiers, while they were fighting to liberate Europe, without revealing the slightest recognition of its absurdity. The order even went so far as to instruct the French allied forces, "to see that the French civilian population respected American social etiquette. To treat black soldiers as equals, or to show them respect would, they were told, be offensive to white American soldiers. This was especially true when French women socialize with black men." And so Emmett J. Scott observed, "Thus it was that race prejudice in the Army was carried

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overseas-to a land where discrimination was on account of race or color are neither practiced nor encouraged-to a land where freedom, liberty, and equality are truly exemplified."\textsuperscript{297}

Fortunately for African Americans serving in the military, the French military personnel seemed rather unmoved, and doubtful about the whispering campaign that the American government had instigated. French instructors remained quite helpful providing training, but white instructors were so biased, that some in the black officer corps contemplated quitting their training altogether. Others did not choose to sit back and take the unfair treatment without voicing their complaints to their superior officers. Lieutenant Sylvanns Hart, exercising his right protest according to the military code of conduct, complained over the heads of his immediate commanders and "as a result the two most prejudiced American instructors were relieved from classes we were in and the remainder began to show a little more consideration," as Houston recalled.\textsuperscript{298} This particular scenario is both interesting, and instructive of the opportunities that were missed by the federal government regarding the possibilities of changing racial attitudes.

No president would address those issues until after the Second World War. However, officers following appropriate codes of conduct highlighted exactly what many African Americans had been saying all along, that is, if the military insisted that men treat each other with respect and dignity, they would follow orders. This is particularly apparent when one recognizes the culture within the military surrounding


\textsuperscript{298} Ibid.
the power of the uniform accompanied by the rigid power structure. Additionally, outside of the cultural power of the uniform within the armed services, the government had the enforcement power and statutes on its side. That is to say, maintaining that its officers and men follow the rules of protocol and rank in the military would have been enough incentive for many, if not all men to follow their orders. This view would only be reinforced for Houston by a life threatening experience, involving ironically, not German soldiers, but Americans, in yet another pivotal experience during the war that would steer him closer to his life’s work.

A Near Escape

While many of the black officers that accompanied Houston overseas were as yet unaware of the whispering campaign being waged against them, its repercussions were becoming more evident. French women had begun to take an interest in many of the new officers from Houston's outfit, and with some good reason. Many of the officers were multilingual, indeed spoke French, were courteous, and did not talk down to the people of France with whom they came in contact. Conversely, as Houston had observed, many of the white Americans did condescend to those in the city, and as a result many of the townspeople quite naturally and freely socialized with the black officers, disregarding the weak remonstrations of the Americans.

It was becoming ever more palpable to African Americans’ serving that both the white leadership of the War Department and that of the generals in France, were extending race policies overseas. White officers were becoming emboldened, attempting to exert in France the same sorts of racial entitlement and intimidation that were accepted back in the United States. These policies, then, strained the already tenuous nature of sexual politics as they were beginning to form in France, when white women and black men were openly dating to the consternation of many. And given the military leaders’ acquiescence to segregation in the military, comingled with its whispering campaign against black men in the military, it was only a matter of time before the situation became explosive. One night while walking home, Charles Houston found himself mired in a confluence of events that could have cost him his life.\(^{300}\)

The men were now stationed at Camp Meucon with the closest town of Vannes, situated approximately five miles away in Brittany. Vannes was described by Houston as a beautiful city with a history dating back to Julius Caesar, and a population of approximately 10,000 people.\(^{301}\) This small town would serve as center stage for an act of violence towards Charles Houston and a friend, perpetrated not by the Germans, but rather their own men. An explosion of American race prejudice was unleashed on foreign soil that would not be peculiar to him alone, as other soldiers suffered similar acts of violence. American race prejudice took many forms

\(^{300}\) Ibid.

in France, and the United States, but the one commonality was that acts of intimidation surrounding physical threats were often predicated on the interactions, perceived or otherwise, between black men and white women. At times mere proximity, absent any sexual or social interactions, was enough to spark an incident as Houston would learn firsthand. Compounding the prejudicial leanings of whites in the armed forces the “whispering campaign” in France aimed at black soldiers was making an impression, if only among American troops. This effort to head off what white commanders like Erwin perceived to be overly solicitous behavior by the French in general, and French women in particular, undermining the existing racial order had real consequences. General Order No. 40 was necessary for the preservation of white political and economic hegemony back in the United States, and one that it was quite ready to impose. It was within this broader historical context that relations between the races were informed by increasingly efficacious transnational influences beyond the control of the military that belied American custom. Amid the racially charged atmosphere stoked by the U.S. Military Houston, while stationed in France, headed out for a night of entertainment and relaxation unaware of the danger that lie ahead.

On an evening when the men had some spare time, two white captains from the United States Army were walking home on one side of the street when they noticed a black officer, who they felt was with “their” women. Houston, coming upon the scenario himself, remembered that "about that time Mortimer Marshall, now an undertaker in Culpepper, Virginia, and I happened by on our way to the hotel after
attending a French movie. The lieutenant called us and we went over, innocent of
what was going on. Pretty soon Henry Collins happened by and stopped to see what
was up. Marshall, Collins and I were not taking part in the argument but merely
standing by listening to our brother, lieutenant fuss with the two captains. The next
thing we heard and saw was a lot of white soldiers running down the street. One of
the white officers had gone two blocks away to where men were waiting to start the
camp and had told the men to come down and lynch us. He was leading the bunch;
and as soon as he reached the spot proceeded to take charge.\textsuperscript{302}

All this took place sometime between 10:30 and 11 o'clock at night, without
much help around, as more men were moving their way toward them. As good
fortune would have it, or so Houston thought at the time, a group of French soldiers
was retiring and moving to the streets, but, rather than helping, they moved right on
through. Houston stated that "the officer who led the mob began to yelp about
"Niggers" forgetting themselves just because they had a uniform on, it was time to
put a few in their places, otherwise United States would not be a safe place to live in
after they get back."\textsuperscript{303} Clearly the federal and military policies, undermining and
demeaning the service of black soldiers, only bolstered white men in uniform, in their
attempts to extend racial hegemony overseas.

The men were now enveloped by groups of white enlisted men and officers,
and Charles and his comrades began arguing that they (African Americans) had done

\textsuperscript{302} Ibid.
\textsuperscript{303} Charles Hamilton Houston, "Saving The World For Democracy," \textit{The Pittsburgh Courier},
September 28, 1940, 13.
as much to make the war a success as anyone else. As the crowd began to move
closer French troops again appeared, and this time the group of white men moved
backwards in a nonthreatening manner, beginning to disperse. However, as soon as
the French soldiers had made their way through the crowd and out of sight, they
redoubled their attacks. At this point, Houston remembered that "the crowd surged
again, and the officer began yelping that no Negro troops were any good, that the
10th Calvary had let the Mexicans run them away at Carrizal." This of course was
patently untrue, as African American soldiers serving in Mexico under General
Pershing in June of 1916 served honorably, and at times heroically, as they were
outnumbered but fought the Mexican forces killing their commander Carrazal. By
this time, there were four white officers and four black officers squaring off with one
another, when someone in the crowd yelled that they should fight it out. The white
officers ignored the instigation, choosing instead to hurl racial slurs, and the black
officers gave it right back to the white officers, claiming that they were just afraid.
But just as things began to heat up again, the military police finally arrived, breaking
up the fight.

Oddly, no one was arrested in the incident, as the police were interested only
in breaking up the scuffle. It also appeared to Charles Houston that a number of the
enlisted men were really uninterested, as they were surging, to make the leap in
military protocol and grab hold of men who were wearing the officer's uniform.

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304 Ibid.
306 Ibid.
Something about rank, and the privilege that accompanies it, forestalled the enlisted men, at least that night, from bridging the Rubicon of rank. Had the military insisted that all of its men in uniform abide by the military code of conduct, rather than acquiesce to southern sentiment, one has to wonder how much progress could have been made prior to 1947.

While Houston avoided being lynched, or arrested, it was not his last incident with the military police. At a talent show organized to alleviate the stress of war, white officers had not allowed African Americans entrance, and a fight broke out. As a result, the next day the Brigadier General in charge of the camp placed all of the men under arrest, and even though Houston was not part of the scuffle, he was not spared the charge. As was becoming an all too familiar experience for Houston, this was the way the military conducted justice. Escaping the brig, their penalty was to participate in marches back at camp, where they were under restrictive orders, and unable to leave without written approval. This was a tedious and nonsensical punishment for an act that Houston not only had not participated in, but one which had involved only a few men. Thankfully, the war was winding down, and since Houston spoke better French than did his commanding officer, he was able to at least make trips into town to gather groceries for the men, which afforded him an escape from the monotony.  

\[307\] Ibid.
After the armistice was signed Houston was cheerfully able to catch up with the 92nd division in Normandy. Rejoining his regiment in LeMans, France, he was proud to witness the official review of troops held by General Pershing himself. The review provided a special moment for Houston and the other African Americans serving overseas, in spite of all they had been through. He was fortunate to "get a little way behind the general and had a perfect view. One of the great memories of my life was a sight of thousands of Negro troops under arms massed on the parade grounds at LeMans that day." Unfortunately the mood was short-lived, as Major Moton told the men, "Not to spoil the Negro's war record by causing the United States any trouble but to go home, pick up the threads of civil life again and be good citizens." Needless to say, the message was not received well by any of the men, many of whom had hoped that service overseas would change things for the better. Moton, the principal of Tuskegee Institute, was criticized in the black press for a message of such low expectations, although it was completely consistent with the Tuskegee philosophy. That philosophy, addressed earlier rested in part on the idea that there should be no direct confrontation to the status quo which did not sit well with the men that day. Dashing their hopes as they prepared to leave France after Moton's disheartening message was a glimpse of what lie ahead at home as the men

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309 Ibid.
boarded on Jim Crow ships. At last, though, Charles was heading home ahead of the many laboring units.

The stevedores and labor units were held back in France to wrap up operations as the remainder of the African American troops were removed as quickly as possible from the continent. Black troops encountered further segregation on the way home, and became more and more agitated by the cumulative weight of segregation. In a comment laden with antipathy, Houston spoke for the mood of many of the men when stated that "I did not protest. I was so disgusted I made up my mind there was only one thing I wanted: to get back to the United States, and get that uniform off as soon as I could find a job."311 Jobs were what African American’s sought immediately after the war, understanding that the freedoms for which they had fought, saving the world for democracy, would not come to fruition without continually striving for economic independence. A final lesson regarding how little life had changed while Houston was away, occurred when he and a friend made their way home on a forty-eight hour pass. He and his friend McDaniel were on a train headed back to their homes, attired in their full uniforms. Due to a lack of seating, they sat across from an older white gentleman who abruptly had the waiter remove his lunch. As Houston recalled, "I told the man we had just landed from overseas and asked him if he was going to leave the table because we were colored. He replied he

could not help it if he was from the South. He moved. We ate our meal. And I felt
dammed glad I had not lost my life fighting for this country."

As disheartening as Houston's experiences were, there were a number of
African Americans who were hopeful that the end of the war would bring with it the
promise of full citizenship. One reason for that hope rested with a role model and
hero referred to in Irvin S. Cobb's "Young Black Joe." Cobb, a southerner, had
traveled with African American troops and wrote about the heroic exploits of black
troops under fire. The article, which was published on August 24, 1917 in the
Saturday Evening Post and was so well received it was reprinted in newspapers and
magazines like the Crisis. Positive attributions by the white press, only served to
validate the fears that Southerners in particular, had from the very first discussions of
African Americans being drafted of into the military. Ultimately, as they saw it,
service in the military would give rise to heightened expectations of soldiers returning
home, and now it had come to fruition. There was no question that African American
soldiers had served credibly, and honorably, the equal of any men fighting or
laboring. These warriors who returned home voiced new hope; one soldier was
overheard excitedly pronouncing "that 'New Freedom' must come we have won it."
While another soldier exclaimed, "we came to France and won man's chance!"

Some historians have attributed this robust new attitude on the part of African
American soldiers to their participation in the Great Parade of February 17, 1919, and

312 Ibid.
313 Anita Lawson, Irvin S. Cobb (Bowling Green University Press, 1984), 164-165.
314 Irvin S. Cobb, "Young Black Joe," reprinted in The Crisis, November 1917,
315 Nelson, A More Unbending Battle, 261.
316 Scott, History of the American Negro, 297.
consider it to be the date the New Negro movement was born. However, the historian Blake Nelson identifies an earlier starting point in 1916, defining the dichotomy between Old and New. The “Old Negro” felt that change was possible, but did not demand, was accommodating, lived apart, patient, had a faith in God, didn't agree with Jim Crow, but didn't rebel either. The “New Negro,” on the other hand, refused to accept those old notions, no pretending, no separateness, and insisted on living free and equal, now.”

Adding international momentum to the movement was W.E.B. Du Bois’ attendance at the 1919 Pan African conference held in Paris, which had the stated purpose of examining the status of blacks in the post-war world. Du Bois made it clear to everyone that the condition of African Americans in the United States needed the attention of the world, and that change must be demanded.

During the First World War the federal government stepped forward as both the nation’s largest employer, and the most uniquely empowered entity to guarantee the rights of its citizen-workers. In the post Plessy era, the federal government removed itself as an active arbiter for the equal rights of African Americans, due largely to the establishment of de jure segregation, and the reassertion of states’ rights after a brief period of federal oversight. Woodrow Wilson’s administration failed at every level to secure the legal rights of African Americans, even at the state level, where laws guaranteeing equal treatment in public accommodations existed, as in Iowa. The president was quite willing to allow the prejudices of another region to trump the law. When it came to military justice, African American soldiers were

318 Scott, History of the American Negro, 470.
exposed to brutal mockeries of justice, as the president and attorney general each turned a blind eye toward citizens of color. In the case of the Houston riots, the government ignored federal law, deferring to Texas law enforcement, which habitually instigated violence against men in uniform. In one of its more profound abrogations of Constitutional responsibility, the government actively exported racism. Much to the dismay of Charles Houston, as the men moved from the states to the European theatre, their hopeful notions of earning equality in battle would meet with an all too familiar demise.

The federal government also failed African Americans as it prepared to prosecute the war in which it neglected to adhere to military protocol, and failed in its charge to guarantee the rights of its citizens while fighting to save the world for democracy. Grievances regarding the war, and the conduct of the federal government were many, and compounded by the expectant anticipation of equality after the war. Women, white and black, were able to experience the fruition of their efforts to secure the franchise with the passage of the Nineteenth Amendment after the war had ended. African Americans on the other hand, would receive only the reassertion of Jim Crow's legitimacy after noble service in a war, the success of which they had helped to achieve. That failure was felt deeply during the war, as the removal of state barriers should have enabled the government to follow federal laws unencumbered by the states. Presidential leadership at this important juncture in African American history was also decisive in shaping the kinds of experiences black men in uniform would enjoy, or not. Now that the troops were home, one of the essential questions
many asked themselves was what, if anything, would they do to change the status quo at home. Although there were some who knew and understood the unacceptability of the status quo but would still need something to tip the scales in favor of action.

When Houston returned home that summer, his job at Howard no longer existed, and he was forced to find employment elsewhere, eventually landing a teaching job at a high school in Washington DC. The summer of 1919, also known as "Red Summer," would have a profound effect on Houston. Riots had broken out during the summer, and Washington DC was not exempt from a vicious riot itself. By the evening of July 21, 1919 there were five people killed, 200 jailed and hundreds of rioters between the Capital and the White House causing many of those in power to consider implementing Martial Law until the riot was quelled. The next day John K. Shellady the Secretary of the NAACP appealed to President Wilson in an editorial printed in the Washington Post. He denounced the fact that soldiers, sailors, and marines were attacking citizens, stating that "Men in uniform have attacked Negroes on the streets and pulled them from street cars to beat them. Crowds are reported by the New York Times to have directed attacks against any passing Negro by cries of 'There he goes!'"

Amid the lethal D.C. riots, Houston now a civilian encountered the stark brutality of a race riot in his own home town. The experience would be another of a growing number of occurrences that helped to clarify for Charles why a career in law

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would be his life's devotion. He was brought into the riots through the life of a 25-year-old black man named TS Jones, who had gone out to help a family friend find her children in the midst of a riotous Washington DC. While he was out, he was cornered by a white mob, screaming to lynch him. As he ran into a building to save himself, he was cornered, and horrified to find himself being arrested for a murder that he had not committed. The case was so egregious that Charles' father, William, who almost never took criminal cases, agreed to defend the young man's life. Despite the vigorous defense offered by William Houston, T.S. Jones did not have much of a chance in those racially charged days, and he was found guilty. For the younger Houston, this was an eye-opening moment, how could such a travesty befall an innocent man without so much as cry of foul from the outside world? That fall, on September 18, 1919, Charles Houston entered Harvard University as a law student. 321

Like Amherst, Harvard was one of those universities which on occasion accepted African Americans, and again, like Amherst, as long as they were inconspicuous, their tenure was welcome. Houston had saved some of his money from the military, but for him to attend Harvard it was also necessary for his father and his mother, both of whom worked, to help pay the expenses attendant to such a prestigious and costly university. He was, from the very moment he stepped on campus, a superior student, and in his second year he was so well thought of that he was chosen to organize a luncheon honoring Marcus Garvey at Harvard Union. As a

result of his contact with Marcus Garvey, Houston was inclined to think well of his contributions to African Americans throughout his life. In his third year of law school, Charles became the first African-American elected as editor of the Harvard Law Review. It was quite clear that he was regarded as "one of the brightest men on campus." He was early to class and often stayed after class asking questions of the professors that demonstrated a keen understanding of the law, and one classmate acknowledged that classmates were often overheard saying that “Charles Houston was Supreme Court Material.”

While it was true that he was respected and well-liked, the issue of race still followed Houston, and he was well aware of the fact that there was still some resistance to his joining the editorial board. As Houston recounted, "The editors of the review didn't want me on this fall, now all is one great harmony. But I still go on my way alone. They know I am just as independent and a little more so, than they. My stock is pretty high around these portions. God help me against a false move." To be the first black man on the Harvard review was quite an honor, and he was well aware of the historic role of that position, yet he was not cowed by pressure. As he himself noted, it is important to note his sense of independence, because this trait would be evident throughout his life, and serve him well.

After graduating cum laude in 1922 with an L.L.B. degree, Houston was certain that he wanted to receive a Dr. of Juridical Sciences, and since he had studied some of the nations' most respected legal minds, including Roscoe Pound, and Felix

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322 Ibid., 51.
Frankfurter, he made an excellent candidate. Eloquently, Houston explained why he wanted to pursue a doctoral degree: "My reasons for desiring graduate work are both personal and civic... A deep desire for further study in the history of the law and comparative jurisprudence... [And the belief that] there must be Negro lawyers in every community... The great majority [of which] must come from Negro schools... [where] the training will be in the hands of Negro teachers. It is to the best interests of the United States... to provide the best teachers possible." His seriousness in the mission to fulfill what he saw as a desperate need in the African American community would drive him to excellence. After applying for and receiving the Sheldon Traveling Fellowship, which allowed students to travel and study abroad, Houston found himself on his way to Madrid, Spain, where he would study civil law. His travels also took him across the northern tier of Africa, where he noted that the influence was so strong that it "colored his entire life on the race question."324

When Charles Houston returned home after graduation from Harvard University, he made his father's earlier wishes come true by joining him in his practice. While attending college, Houston had not been a complete recluse, but had dated Margaret Gladys Moran. After having been admitted to practice in Washington DC on June 9, 1924, he was prepared to ask Margaret, or Mags, as he called her, for her hand in marriage. They were happily married in a small private wedding on August 23, 1924, and Charles' partnership with his father brought in many new clients. However, his refusal to require an ability to pay on the part of his clients, a

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325 Ibid. 53-54.
point of contention with the senior Houston at times, meant that his salary alone was not enough to sustain the young couple. This would change though, as he prepared to work on his first Supreme Court case in 1925, after which he would no longer have to worry about making ends meet.\textsuperscript{326}

\textsuperscript{326} Ibid.
CHAPTER VI

INCORPORATING RIGHTS: THE NEXUS OF RACE, LABOR, AND THE STATE

In the immediate aftermath of the war, workers white and black maneuvered to gain a stronger foothold in the workplace through unionization, as the federal government steeled itself for what would become “Red Summer,” and the beginning of another round of repression aimed at its own citizens. Before the war had officially begun, precedent was being set as the government allowed corporations to use sedition laws to crush trade unions as they maneuvered to position themselves to profit from the war. In 1919 workers also found that the world they “saved for democracy” had been transformed with the advent of a successful workers revolution in Russia. After a series of bombings, most famously on Wall Street, the sedition laws were swiftly passed to assure those in the corporate apparatus that no such transformations would occur in the United States. Alleged communists had been rounded up, given stiff sentences or deported, and injunctions against workers were initiated by Attorney General A. Mitchell Palmer. He had asserted himself in the political vacuum that developed while President Wilson lay stricken in the White House, awaiting the anti-climactic ending to his presidency, in March of 1921.

That spring, as the Red Scare drifted to an end, granting a reprieve of sorts for those who had been in political hiding, there was no such respite at either the state or federal level for workers. As has been demonstrated so far in the “Establishing of Plessy,” and in “Confronting Plessy,” the state and federal government alternately and together had acted to restrict 14th Amendment rights of African Americans. As Labor attempted to navigate a changing political economy that was buttressed by an ever more expansive government, disposed to use its considerable force to maintain order, it was faced with a coalescing of corporate, local, state, and federal force, including that of the air force. This unprecedented coalition resulted in the most aggressive example of the state siding with corporate power to suppress labor U.S. history occurred in 1921 on Blair Mountain, in the southwest corner of West Virginia. \[329\] Relations between the miners and owners had reached a boiling point over working conditions, abuse, and poor living conditions, with the initial spark ignited by the murder of Sid Hatfield by the hired guns of the reviled Baldwin-Felts Detective Agency. Fifteen to 20,000 miners, of whom somewhere between 3,700 and 5,000 were African American, participated in the largest labor uprising in United States history in an unprecedented illustration of interracial cooperation. \[330\]

It was not skin color that mattered in those days, as two armies representing labor and the state, fired mercilessly at each other on Blair Mountain, rather,


neckerchief color identified miners committed to the cause. The miners wore blue overalls, with red bandanas tied around their necks as a sign of solidarity. It was a demonstration of class solidarity for those in the miners’ army, and was recognized by their foes in the state and federal armies who referred to them as “rednecks.”

Patrick Huber mentioned in his article *Red Necks and Red Bandanas: Appalachian Coal Miners and the Coloring of Union Identity, 1912-1936*, there is evidence to suggest that at least some of the African American strikers wore the uniform in a display of worker solidarity.

Not only was it the largest pitched battle between labor and ownership, but it also resulted in the only use of the Army Air Service (now the Air Force) against its own people. Twenty-one planes from the 88th Aero Squadron were sent to Kanawha Field, equipped with gas and ammunition, together with 2,100 infantry. The legal question facing the Harding administration was whether they would declare martial law. Mindful of the ruling in *ex parte Milligan* (1866), which specified that martial law could only be declared if the court system in West Virginia were closed, President Harding declined to ask Governor Morgan to close his courts. When the fighting began the official data put the numbers for miners and military between 15,000 and 20,000 although the actual figure was probably closer to 12,000. Regardless, once the professional military entered the field it was over, and the miners and unionism suffered a crushing blow. They did not however, crush the

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333 Ibid., 200-207.
spirit of the men, or the significance of this moment of interracial cooperation that was more than a facile arrangement, as they fought side by side risking life and limb for a common cause.

As the local unions raised money for weapons and assessed the battle that lay ahead, Scott Reese, a black official in the local miners union, told those around him that “If white people had guns they should not be backward, they ought to get one too.” The cooperation moved beyond mere organizing, and out onto the field of battle, as the *Trenton Evening Times* reported on September 1, 1921 that John Gore, a deputy, had been in a dual with an African American miner resulting in mortal wounds to both men. As the miners came to realize that they were facing insurmountable odds, and the battle began to ebb, the rank and file began to drift safely back to their homes. Fred Knight, an African American veteran of the First World War, was interviewed by a reporter as he made his retreat with the others. He told the reporter that he had been “fighting for seven days and seven nights on Hewitts [sic] Creek without sleep.” Knight went on to explain “That sure was enough. It wasn’t no crap game I will tell the world. Worse than the war over in France, believe me. Them fellows on the other side just kept firing at us all the time with machine guns. They were on the other side of the ridge part of the time and sometimes on top. I am going home now and sleep for two months.” He added with a smile, “I reckon the United States troops will be gone by then and we will have a

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334 Ibid. 168.
335 “Another Dix Regiment Is Ready For Mine War, Aircraft Squadron Set Out Armed Intervention,” *Trenton Evening Times*, September 1, 1921 sec. 1A.
little more war." The use of the collective “we” is telling in a time when blacks and whites too often squared off as competitors in the industrial landscape of the early twentieth century.

The landscape was changing with regard to race, labor, and the law, and while Blair Mountain went down as a defeat, workers would continue to challenge the system using the power of the strike, and also the power of the courts. While the union and miners response was unrivaled in its ferocity and breadth, the government’s response too was unrivaled, and only tempered by President Harding’s reluctance to run afoul of *ex parte Milligan*. The law, and particularly the Supreme Court, maintained the power to quash presidential excess, or at least give Harding pause, when considering the legal consequences of his actions with regard to labor. Changes could be seen in the demeanor of the Taft Court during the late teens and early twenties, as it began to shift, ever so slightly, toward a new contemplation of the Fourteenth Amendment. William Howard Taft, a conservative justice, with a decidedly pro business legacy, is known today by some as a “Case and court jurist.”

Meaning he did not often take the long view of the law, but rather dealt with the cases brought before him. An exception to this practice, however, was an extraordinarily developed view of the property rights, and granting that he never took an official position on the 14th Amendment, but Taft did act as if the Bill of Rights

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336 “Miners Threaten Death To Police,” Tulsa Daily World, September 6, 1921, sec 1A.
applied to the states.\textsuperscript{338} Of this, Charles Houston was keenly aware. Examining Houston's understanding of the historical development of the three Civil War amendments reveals a juridical disposition, informed by history. It was this informed historical understanding that resulted in an applied epistemology that ultimately transformed Howard's law school, as well as the legal landscape of the United States.\textsuperscript{339}

\textbf{Devolution and Evolution of the War Time Amendments}

Charles Houston, in professorial fashion, reviewed the evolution of the Thirteenth, Fourteenth, and Fifteenth Amendments from their inceptions to the point at which the Taft Court took on the case of \textit{Gitlow v. New York} which was decided in 1925.\textsuperscript{340} This review offers a number of insights into his legal strategy, and significantly identifies the nexuses between race, labor, and the state. As witnessed in the first two chapters, there was great debate over what the 13th, 14\textsuperscript{th}, and 15th Amendments to the Constitution really protected. For Houston, there was no debate about what those amendments meant, however, as he stated that they "formalize the great moral issues underlying the Civil War."\textsuperscript{341} He realized "that often the pace and


\textsuperscript{339} Charles Hamilton Houston, "Speech to the National Lawyers Guild, February 21, 1949," Charles Hamilton Houston Papers Box 163-16 Folder 27; Manuscript Division, Moorland –Spingarn Research Center, Howard University, 1-5.

\textsuperscript{340} Peter G. Renstrom, \textit{The Taft Court: Justices, Rulings and Legacy} (Santa Barbara, California: ABC-CLIO Incorporated, 2003), 151.

\textsuperscript{341} Ibid.
sweep of reform is directly related to the bitterness and cost of the struggle to effect reform, one can safely say that nothing short of a civil war could have produced such a radical departure a national policy as the Civil War amendments represent."\(^{342}\)

Fully capturing the historical sweep of the importance of the wartime amendments, Houston was able to dispel in one fell swoop what courts had been declaring since Plessy.

Beginning with a deft analysis of the Constitution from 1789, as it reflected the interests of slaveholders, Houston explained that "Article IV, section 2 put the federal government in the police business of running down the returning fugitive slaves. The political history of the nation down to the Civil War," as Houston explained, "is a succession of aggressions by the slaveholders and a series of compromises by the rest of the country in order to save the Union." He went on to state curtly that, "Even after the secession of South Carolina, when everyone knew that the Civil War was inevitable, Congress made one last desperate, futile gesture to save the Union by proposing to the states on March 2, 1861 a proposed thirteenth amendment to the Constitution which constituted a total abdication of federal power over slavery. The proposed amendment read: "article XIII, No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State."\(^ {343}\)

\(^{342}\) Ibid.

\(^{343}\) Ibid.
As Houston observed, even though the Civil War had started, three states nevertheless ratified the amendment; Ohio on May 13, 1861, Maryland on January 10, 1862, and Illinois on February 14, 1862. Fortunately, as Houston recounted, the Civil War had unleashed forces that that could not be turned back by reactionary forces. The result, as we all know, is that the Civil War ended the institution of chattel slavery, and Congress, rather than paying attention to its first draft of the 13th amendment, under Republican leadership, actually ratified the 13th amendment that we have all come to know. Here, Houston expertly pointed out that "the text of the amendment repeated in substance the words of Article VI of the ordinance of 1787 for the government of the Northwest Territory: there shall be neither slavery nor involuntary servitude in said Territory, otherwise ban in the punishment of crimes, whereof the party shall have been duly convicted...."344

After passage of the 13th Amendment in 1865, to prove its intent Congress passed the first Civil Rights Act on April 9, 1866. Contrary to what a number of Democratic leaders at the time insinuated, Houston declared that the 13th Amendment clearly "established national citizenship (italics mine), which was later written into the 14th amendment." For Houston, there no longer existed any notion of dual citizenship, i.e. state citizenship and national citizenship. Instead, the Civil Rights Acts were a direct against the black codes passed at the end of the war, securing national citizenship. Even more, Congress passed the Peonage Act of 1867 that asserted itself yet further in defining Congress' historical intent by outlawing an

344 Ibid.
outrageous practice aimed at African Americans. It then proceeded to pass the Reconstruction Act of March 2, 1867, and sections two and three of the 14th Amendment, further embedding the issue of suffrage throughout the 15th Amendment.  

"The three war amendments were further significant as a departure from all prior amendments and that they represented an extension of national power as distinguished from the first 11 amendments, which represented a limitation on national power. They were designed to eradicate class distinctions and to create an egalitarian political democracy without distinction as to race, color or previous condition of servitude, founded primarily upon national allegiance as distinguished from state allegiance, and protected by national force. Each Amendment concludes with the statement that Congress shall have power to enforce its provisions by appropriate legislation."

Houston is quite clear in his explication as to the intent of Congress regarding the 13th, 14th and 15th Amendments, and in his historical analysis asserting that Congress meant to protect the civil rights and liberties of African Americans.

Buttressing his analysis of Congress' intent, Houston went on to demonstrate the passage of several acts, for example, the enforcement act of 1870, allowing for election oversight. The Ku Klux Klan acts of 1871 and 1872, followed by the Civil Rights Act of 1875, providing for equal accommodations in hotels and other public places of amusement. The Civil Rights Act of 1875 also forbade "the exclusion of

345 Ibid.
346 Ibid.
347 Ibid.
Negroes from juries because of race or color."\(^{348}\) Houston's review went on to recognize that very seldom in US history have all of the branches of the government necessarily exercised the same enthusiasm for reform. It is at this point in Houston's disquisition on the evolution of the 13\(^{\text{th}}\), 14\(^{\text{th}}\), 15th Amendments that he drew an intellectual conclusion for the crowd that the actions of the court were in direct contravention of congressional intent.\(^{349}\)

For Houston there was no question that "the Supreme Court had emasculated what Congress tried to implement."\(^{350}\) He rightly points out that Congress viewed the South as residing outside of the political Union, whereas the Supreme Court reviewed them as wholly within the union, a part of what he referred to as "indissolubly parts of an indissoluble union."\(^{351}\) The rights of southern states according to this judicial disposition were only temporarily suspended, it in no permanent way suspended. At this point, in his analysis Houston took full aim at the intent of the court by stating that, "Supreme Court refused to acknowledge the Negro as equal with the other elements of the population, and underlying all its opinions in that period is a determination to circumvent the attempts of Congress to commit the Negro to the care of the nation, and to leave the protection of the Negroes civil rights to the mercy of the individual states."\(^{352}\)

Demonstrating a wry sense of the historical implications concerning the Supreme Court's disposition, Houston stated that "it is interesting to note that the

\(^{348}\) Ibid.
\(^{349}\) Ibid., 3.
\(^{350}\) Ibid.
\(^{351}\) Ibid.
\(^{352}\) Ibid.
Supreme Court never had any difficulty upholding the power of the federal government to chase fugitive slaves. The Reconstruction Supreme Court had no difficulty outlawing the secessionist loyalty oath as ex post facto laws and bills of attainder. Indeed, the court had leveled its efforts at undoing the gains of African Americans even before the era of Reconstruction had ended. In *Ex parte Millgan* (1866) the court had undone the conviction of a secessionist thrown into prison, finding that the courts of Indiana were open, and so long as they were they in fact must be used. In point of fact this was the same case that restricted Harding from declaring martial law in West Virginia during the Blair Mountain uprising (a positive restraint), but Houston was pointing to the willingness of the court to correct constitutional infringements of individuals within states. This willingness on the part of the courts to correct constitutional infringements with regard to race eluded the courts grasp to help African Americans seeking remedies from similar state actions. The court continued with *Cummings v. Missouri* in 1867 striking down loyalty oaths, and *Ex parte Garland* struck down the Test Oath Act of Congress (1865) to practice law in the Federal Courts as a bill of attainder. Again, what Cummings and Garland demonstrated to Houston was the Court's willingness to correct what it saw as infringements of white citizens on the part of states, but ignoring the rights of African Americans as states continued to limit their rights. These decisions of the court were

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353 Ibid.
mere steps on their way to dismantling the Fourteenth Amendment’s protections, which as Houston points out, occurred with the Slaughterhouse case.  

In 1873, Houston stated that “the Court in the Slaughter House Case gutted the First Section of the 14th Amendment. By taking the position that the basic civil rights were beyond direct Federal protection except in those few fields where Federal supremacy was already established by constitutional provisions other than the XIV Amendment.” The Slaughterhouse decision reduced the immunities clause to include such things as traveling to Washington DC, or the right to use federal courts, and specifically only right's related to clauses in the Constitution. This, to Houston, signaled to whites in the South that "white supremacy," could still be achieved by legal ends.

The corollary of the Slaughterhouse cases was felt immediately, and did not just impact African Americans during this period, as two white women were thrust in front of the court in an attempt to make the Fourteenth Amendment’s promises real in what became known as the “Feminist Cases.” In Bradwell v. Illinois (1873) the court was asked to examine whether a woman had 14th Amendment right to practice law. Myra Bradwell had been denied a right to obtain a license in her effort to practice law and had sued in order to gain the right. The Supreme Court’s decision was swift, with Justice Bradley denying her right to practice law arguing the

354 Ibid.
355 Ibid., 3-4.
356 CHH, Position Paper on the 14th Amendment, Box 163-17 Folder 27; Manuscript Division, Moorland-Spingarn Research Center, Howard University, 2.
importance of maintaining "respective spheres of man and woman." The second case, *Minor v. Happersett* (1875), evolved from Virginia Minor's aspiration to vote in the state of Missouri, claiming her rights to privileges and immunities guaranteed under 14th Amendment were being violated. The court found that there were no such privileges to be found in the Constitution and denied her right to vote. These decisions were the culmination of a judicial philosophy whose mission was to undo the intent of the Fourteenth Amendment, and were equally disturbing a "consequence of the failure of the amendment as a charter of human rights," Houston observed.

As debilitating as the Slaughterhouse case was and the Feminist cases that followed, the *Cruikshank* case (1875) continued the courts devolution from the original intent of the 14th Amendment. The case itself emanated from a devastating act of hostility that occurred on Easter Sunday, in 1873, in the small village of Colfax, Louisiana. Over 100 black Republicans squared off in a pitched battle against a group of white supremacists, resulting in the deaths of approximately 100 black men. The result was a decision that limited the ability of the federal government to go into a state and protect the civil rights of its citizens.

As Houston analyzed the conduct of the court, it was clear that "considered in its historical setting the Cruikshank case reduced the equal protection clause to almost a nonentity, for the threat to the Negro in 1875 was not hostile state action but the

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357 *Bradwell v. Illinois*, 83 U.S. 130 (1873)
358 *Minor v. Happersett*, 88 U.S. 162 (1875)
359 CHH, *Position Paper on the Fourteenth Amendment*, Box 163-16 Folder 27, Manuscript Division, Moorland-Spingarn Research Center, Howard University.
terrorism of the Klan and other conspiratorial action by the ‘white supremacists.’”

To Houston it was evident that African Americans in the United States were quite capable of protecting themselves from antagonistic legislation from the state, so long as they were protected from hostile groups set on using intimidation to keep blacks from the polls. As he noted, “The Negro lost the vote in the South not by legal means but by unlawful intimidation. When the Southern state constitutions were rewritten in the 90’s disenfranchising Negroes, the South was merely putting a legalistic label on an already accomplished fact.”

Rounding out the series of decisions that effectually undid the Fourteenth Amendment were the 1883 cases involving the Klu Klux Klan Acts, that provided protection to individuals from acts of violence from law enforcement, groups, or individuals, and the Civil Rights cases decided the same year. The case involving the Klan constituted the first lynching case to reach the Supreme Court, and as Houston pointed out, the court in its decision rejected the constitutionality of the Klu Klux Klan Act, and released those men convicted of the lynching. In the Civil Rights Cases, “There the Court held that Congress under the XIV Amendment could pass general, affirmative legislation to prevent infringement of civil rights by private persons but had to confine itself to dealing with violations by the states.” These cases were cited by Houston as part of the legal road to the establishment of Plessy v. Ferguson (1896) laying down the doctrine of separate but equal. Airing his

361 CHH, “Speech to the National Lawyers Guild,” Box 163-16 Folder 27; Manuscript Division, Moorland-Spingarn Research Center, Howard University.
362 Ibid.
363 Ibid.
displeasure with the racially repugnant ruling, Houston pronounced that “There never are separate but equal facilities in the United States; equality always breaks down either directly or in its implications under segregation. The only purpose ever of putting the finger on a minority in the United States is for the purpose of discrimination.”

The Supreme Court through a series of decisions assaulting the original intent of the Fourteenth Amendment had in the words of Charles Houston, “converted private prejudices into a legalized, compulsory, self-perpetuating rule of conduct, with sanctions.”

As we can see through Houston’s analysis of the war time amendments they were, in his words, “Originally designed to protect the civil and political rights of human beings and particularly minority groups, the Supreme Court wrote off all the stigmata and badges of involuntary servitude under the XIII Amendment, handed the XIV Amendment to the corporations, and practically ignored the XV.” This followed a series of three stages as he saw them. The first stage stripped the 14th Amendment of any application related to its original intent, leading to the second stage’s consequences leading to the takeover of the amendment by corporations, which in turn lead to the executive and congressional branches adopting the judicial branch’s interpretation.

During the second phase, Houston outlined what he defined as the laissez-faire interpretation of the amendment. It was according to him accomplished by the

364 Ibid., 5.
365 Ibid.
366 CHH, Paper on the Evolution of the 14th Amendment, 1949Box 163-17 Folder 29; Manuscript Division, Moorland-Spingarn Research Center, Howard University.
acquiescence of congress to “right wing demands.” The ultimate strategy of the corporations was to expand their protections from privileges and immunities, to also include rights included under the due process and equal protection clauses. Not only were the protections under which corporations expanded during the 1880’s and 1890’s, it also witnessed the ascendency of the tremendously powerful railroads over the Supreme Court. The alteration of the Fourteenth Amendment nullified its original intent, depriving African Americans of its intended benefits, and turned it into an “instrument of the corporations to use against social legislation.” Workers, black and white, were frustrated by legal decisions such as *Lochner v. New York*, (1905) and due to the laissez-faire ideology that dominated the court, civil rights and civil liberties in the United States had reached their nadir.

The Nexus of Race, Labor, and the State

Overall, the first half century of the Fourteenth Amendment’s existence led to its dismantling, piece by piece. And, to the extent that socially conscious legislation was demanded by African Americans, women, and legislators, their efforts were thwarted through the first quarter of the twentieth century. The Supreme Court had given reactionary forces cover through *Barron v. Baltimore* (1833), involving the public takings clause of the Fifth Amendment. In their decision the justices, lead by

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367 Ibid.
368 Ibid., 3.
Chief Justice John Marshall, ruled that the Fifth Amendment was intended to limit the federal government, and had no application in the states.\textsuperscript{369} However, Houston noted that “life outside the Supreme Court chambers had not been standing still. The hard facts of inequality of economic competition between capital and labor, the grosser discriminations against Negroes persisted and gradually penetrated even within the inner sanctum of the court.”\textsuperscript{370} This is why, between the years of 1924 and 1935, as Charles Hamilton Houston grew in stature from practicing attorney, professor at Howard University, and Vice Dean of Howard University, he was able to make groundbreaking inroads arguing cases in front of the Supreme Court. \textsuperscript{371} Houston was right, there were significant changes being made inside the court that would reverse the dreadful degringolade of the Fourteenth Amendment.

After being asked by Harvard classmate William H. Lewis to help prepare the brief for \textit{New York Central Railroad v. Chisholm} (1925) Houston began to eagerly prepare for his first participation in a Supreme Court case. Significantly for Houston and the history of civil rights law, another case, \textit{Gitlow v. New York} (1925) was going to have profound effects on the lives of African Americans serving as the nexus of race, labor, and the law. In a stunning example demonstrating the law of unintended consequences, a free speech case would be in Houston's words, "the genesis of a new

\textsuperscript{369} \textit{Barron v. Baltimore}, 32 U.S. 243 (1833)
\textsuperscript{370} CHH, \textit{Position Paper on the Fourteenth Amendment}; Papers Box 163-17 Folder 27; Manuscript Division, Moorland-Spingarn Research Center, Howard University.
trend" towards the court’s recognition of the 14th Amendment's original intent.\textsuperscript{372} The Taft court’s initiation of the incorporation doctrine breathed new life into a 14th Amendment whose rejuvenation was necessary to protect the people of the states from the vagaries of individual and state cupidity. It returned the promise of the due process clause, as well as the immunities and privileges clause with Constitutional force, as the phrase “No state shall...,” would grow to have more force as lawyers challenging the court would win cases incorporating more of the Bill of Rights along the way.

The year 1925 then, looms as a pivotal time in the relationship between African Americans, labor, and the state, as black agency, an enlivened fourteenth amendment provided the opportunity for Houston and others to expand the sphere of freedom. Four cases that year dominated the legal landscape for the purposes of this exploration of the 14th amendment, and the legal career of Charles Houston. The first case \textit{New York Central Railroad v. Chisholm} was as previously mentioned, Houston's initiation to the Supreme Court. Secondly, the case of Benjamin Gitlow, a communist, force the Supreme Court to consider the use of the 14th Amendment as a vehicle for implementing the rights of American citizens, articulated in the Bill of Rights into the states. The last two cases involved one of the greatest litigators in American history, Clarence Darrow. His tireless efforts to liberate those who found themselves trapped by a legal system bent on ignoring the law and justice captivated the American public in both the Scopes and Sweet trials in rapid succession.

\textsuperscript{372} CHH, \textit{Position Paper on the Fourteenth Amendment}, Box 163-17 Folder 27, Manuscript Division, Moorland-Spingarn Research Center, Howard University.
While at Harvard Charles Houston had made a tremendous reputation for himself and as previously mentioned secured for himself a reputation as one of the universities more brilliant students. That reputation and his connections at Harvard would now come back to serve him well. William H. Lewis, who now resided in Boston Massachusetts, solicited Houston to see if he would be willing to help prepare a Worker's Compensation case that he was working on for the Supreme Court. The case itself was *New York Central Railroad Company v. Chisholm* (1925). An employee of the New York Central railroad company, Mr. McTier, was a citizen of the United States, and his job, which took him between Malone, New York, and Montréal Canada. Unfortunately a November 9, 1920 Mr. McTier suffered a fatal injury, while just 30 miles north of the American border. His administrator understanding of federal Employers' Liability Act of April 22, 1908, sued in a Massachusetts court to recover $3000 that he was owed under the act.

For Houston and Lewis, the question concerned whether the act had force in a foreign country. They argued from the position that it was an American company and therefore entitled to compensate its employees under the act, the fact that they were out of the country but still under the employee of the railroad made no real difference. The court, however, honed in on exactly this point, asking "as the administrator of an employee of a common carrier, who receives an injury in a foreign country resulting in his death-the employee and the common carrier being at the time engaged in foreign commerce and both citizens of the United States-a right of action under the

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federal employers liability act, or must he rely on the law or statute of a foreign
country where the alleged act of negligence occurred or the cause of action arose?\textsuperscript{375}

It was a question that the justices found unsatisfactorily answered by Lewis as he was making his arguments, finding instead that there was no provision in the federal act providing for extraterritoriality. The act itself proved to be far outdated compared with the more current legislation that spoke specifically of corporate liability, and compensation to the employees that were injured "irrespective of the master’s fault."\textsuperscript{376}

Because of this deficit in the federal acts language, the administrator, the Court argued had no right to claim the $3000. Houston’s first experience involving the Supreme Court didn’t end the way that he had hoped it would. But after this experience with New York Central Railroad, his practice would take off, securing his financial security, and providing a focus of his efforts on the use of the Supreme Court to secure the rights of African Americans. Just months after the April 13\textsuperscript{th} decision in New York Central Railroad Company versus Chisholm, a case involving Benjamin Gitlow, a socialist arrested and found guilty of violating the criminal anarchy laws of the state New York, found that his case had been given a writ of certiorari and was set to argued in November of 1923. And while the decision would prove unsatisfactory for Gitlow, the court’s decision had a tremendous impact on American civil liberties and rights as a whole, and Houston’s legal career in particular.

\textsuperscript{375} 268U. S. 29, at 31.
\textsuperscript{376} Ibid.
Reanimating the 14th Amendment

In the heady days following the end of World War I, Benjamin Gitlow was a firebrand in the socialist movement. He routinely gave impassioned speeches in large venues around New York City, like Madison Square Garden, as well as publishing his writings in *The Revolutionary Age*, a newspaper that was sympathetic to communism. He did so at a time when neither the U.S. government, nor the state of New York found any patience for such activity. Gitlow was arrested and found in violation of New York's criminal anarchy law, to which he immediately countered claiming his First Amendment rights to free speech. *The New York Times* reported on June 9, 1925, that "Gitlow contended that the New York state statute on criminal anarchy was invalid and repugnant to the due process clause of the 14th amendment to the Constitution."377

There were two indictments leveled against Gitlow, one based on the language of a manifesto, the second involving the act of printing *The Revolutionary Age* itself, because it advocated the violent overthrow of the government. In the trial of his first case Gitlow was defended by Clarence Darrow, a man whose reputation as one of the leading defense attorneys in the country was firmly established. Darrow would argue that Gitlow’s publications and utterances amounted to nothing more than abstract political statements certainly protected by the Constitution of the United States. The

court disagreed, and Benjamin Gitlow was convicted and sent to prison in Sing Sing. Gitlow’s appeal was handled by Walter Pollack, the famed civil liberties attorney of the day.

His case was appealed all the way up to the Supreme Court, and argued in 1923 leading to a split decision of sorts, that breathed life into the Fourteenth Amendment. It was here that Judge Sanford noted that what Benjamin Gitlow had written in the Revolutionary Age advocated for mass disturbances in the overthrow of government and that this type of speech was not abstract or protected. He specifically pointed to one quotation found in the Revolutionary age, where Gitlow stated that "the proletariat and the communist reconstruction of society the struggle for these is not indispensable. The Communist international calls the proletariat of the world to the final struggle." The language itself doomed Gitlow, and in 1925 the court handed down its decision to have his conviction sustained by a 7 to 2 decision. Justice Sanford forcibly argued for the majority when he said, "The state had every right to through its laws to protect public peace and safety without waiting until it had and enkindled the flame or blazed into conflagration."

While there was a clear majority on the court convinced of Gitlow’s guilt, two of the justices, Oliver Wendell Holmes with Louis Brandeis concurring, thought differently. Holmes argued in the dissent that was signed onto by Brandeis, accused the court of being too narrow in its views of free speech. Holmes went on to state with equal vigor and certitude that “Eloquence may set fire to reason, but, whatever

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378 Ibid.
379 Ibid.
may be thought of the redundant discourse before use, it had no chance of starting a
present conflagration."\textsuperscript{380} David Kennedy, in his monumental history of America
from the Depression through WWII, \textit{Freedom from Fear}, once referred to a decision
by Justice Holmes as "lapidary" for the style of his cutting remarks in a decision.\textsuperscript{381}
And his observations in the Gitlow case were again deserving of the same
observation, as he applied his rapier wit for both the court's and the public's
consumption. Holmes for example, offered the observation that "every idea is an
incitement."\textsuperscript{382} He also added wryly "The only difference between the expression of
an opinion and an incitement in the narrower sense is the speaker's enthusiasm for the
result. Eloquence may set fire to reason. But whatever may be thought of the
redundant discourse before us, it had no chance of starting a present conflagration."\textsuperscript{383}
Fortunately for the nation, the case did not end with Holmes's dissent, and the
maintenance of Gitlow's conviction. Importantly for this discussion, it also
contemplated the right to free speech of citizens in each of the states.

Sanford for the court had been clear in the decision that the overthrow of the
government clearly could not be advocated, dooming Gitlow. Significantly, however,
he declared, strongly "For present purposes we may and do assume that freedom of
speech and of the press-which are protected by the First Amendment from abridgment
by Congress-are among the fundamental personal rights and 'liberties' protected by

\textsuperscript{380} Ibid.
\textsuperscript{381} David Kennedy, Freedom from Fear: The American People in Depression and War, 1929-1945
\textsuperscript{383} Gitlow \textit{v. People of State of New York}, 673.
the due process clause of the 14th amendment from impairment by the states." That sentence, placed at the end of the decision, was the critical element that would offer the rest of Americans a newly enlivened and expansive understanding of the 14th amendment, although it upheld Benjamin Gitlow's conviction. It was from this decision that the 14th amendment, which had, almost from its inception to evolve into a corporatized document safeguarding the interests of businesses, rather than human beings. It had been falsely constructed, as Houston and others have long pointed out, granting instead the artificially constructed notion of corporate personhood. This personhood had for the better part of a half-century precluded its intended use, guaranteeing due process, as well as those privileges and immunities laid out so artfully in the Constitution of the United States.

From this point forward, we enter what is commonly referred to as of incorporation were one after another of the Bill of Rights would be incorporated granting force to the statement "No state shall..." This represents the historical departure of the Supreme Court's negligible use of the 14th amendment to protect the rights of African-Americans. While Houston's first case in 1925 was the defeat, from that point forward until his death in 1950, he would amass a series of enviable victories in front of the Supreme Court. There is no question that this new rejuvenated 14th amendment allowed Charles Hamilton Houston and others to perch themselves from the new legal foothold established in Gitlow to attack Jim Crow in all of its

\[384\] Ibid.
various manifestations impacting the lives of African Americans as they labored, voted, and sought education for themselves and their children.

Houston went on to become the most famous African-American jurist in the first half of the 20th century, Benjamin Gitlow's life took a series of turns that can only be described as ironic. He had been pardoned from Sing Sing prison by then Gov. Al Smith, and actually sought to run in the 1924 presidential election as a vice presidential nominee of the workers party. He also ran for mayor could not get on the ballot because of his criminal record and his prison term in Sing Sing. Undeterred the Communists asked Eugene Debs to endorse Gitlow and urged him to use a write-in strategy. Then again in 1928 Gitlow was the vice presidential candidate on the Communist ticket with William Z. Foster as they attacked all parties in the United States and railed against imperialist policies of the government. In Detroit, he spoke out against what he termed "Fordism" as it exploited the automobile workers. However, given all of his activities within the Communist Party, he ended his career as an informer as it was reported in the Chicago defender that the "state has hired Ben Gitlow to interrogate college professors," in the state of Illinois.385

While Houston's case in 1925 garnered almost no attention, and Gitlow certainly dominated the media in the East, particularly New York City, it was a little known case in Tennessee during the summer of 1925 that truly captured the attention of the American public. Where Houston's case involved workers directly, and Gitlow

involved the denunciation of capitalism that exploited workers and free speech, the Scopes trial involved a teacher attempting to do his work, by exercising his speech. Here again, Clarence Darrow would be center stage, this time in a dash against the famous William Jennings Bryan. The case dominated the press, both black and white.

Neither man was in his youth in that summer of 1925. Clarence Darrow was in his 60s, and William Jennings Bryan was in his 80s. Darrow was at the peak of his command of the law, language, and logic as he argued for the right of John T. Scopes to do his job free from the maelstrom of an unenlightened majority. 386 None of that seemed to matter after the arrest of Scopes, the trial was framed as the Bible versus science, and received global exposure. As Bryan noted. "They say that somewhere up the tree of evolution, thousands of years or hundreds of thousands of years so man branched off one side of the tree and the monkey branched off the other." 387 Clarence Darrow hit back with a withering attack, using the latest science to trap William Jennings Bryan and his reliance on biblical literalism. 388 He pointed out the biblical fallacy of the 6000 year old world by pointing to Java man, which was 500,000 years old, a 250,000-year-old find in Germany, the discovery of the bones of Neanderthals that were 100,000 years old, and lastly, the skeletal remains of Cro-Magnon 10,000 years ago. The scientific evidence was overwhelming and seemingly impenetrable but the arguments offered by William Jennings Bryan swayed the jury as it returned a

387 Moses Jordan, "Religion and Science Clash At Dayton, Tenn.," *The Chicago Defender*, July 18, 1925, 4.
guilty verdict as Scopes had clearly broken the state statute. However there was no question that it was Clarence Darrow and science that had won on the larger national debate on the world’s stage. After only a short interlude that saw the passing of William Jennings Bryan, Darrow was off again, this time to Detroit, Michigan.

Ossian Sweet was an African-American doctor who had moved into a residential neighborhood in Detroit with his family, seeking to establish a practice and his family in peace. However after a short time in his home, he found himself in the untenable position of having to defend his family against a white mob that had gathered outside his home that also included police officers. Shots were fired, and Dr. Sweet defended his home, firing back. It was later reported in the *Pittsburgh Courier*, that "Dr. O. H. Sweet, and 10 other race persons, charged with murder in connection with the defense of Dr. Sweet home from a mob in Detroit..." It was a case of pointed towards all the worst elements of Jim Crow segregation and the violence that racism and gender. Integrating neighborhoods had long been difficult, if not impossible, for African Americans living in the North or South.

This is a circumstance that the NAACP was not only well aware of, but had been working diligently to fight against. James Weldon Johnson, Secretary of the NAACP in an interview to *Pittsburgh Courier*, observed that "the Detroit case involves the third most dangerous phase of segregation. The NAACP has fought and won a victory in the United States Supreme Court, in a matter of segregation by ordinance or law. We shall very soon argue in the Supreme Court the question of

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389 Ibid.
390 "Darrow To Defend Dr. Sweet," *Pittsburgh Courier*, October 24, 1925,1.
segregation by private agreement among white property owners. We are now facing
in Detroit segregation by mob violence.” He assured his interviewer that to defend
this right the best Council had been secured for Mr. Sweet.

Care was taken to make sure that there were African-American attorneys
participating in the defense of Dr. Sweet so that moving forward the case would have
its fullest support. Given the times and the ambiguity over who fired first the defense
of Dr. Ossian Sweet was going to take a masterful effort in the face of overwhelming
odds. Clarence Darrow was equal to the challenge of overcoming the racial barriers
that existed, as pointed out by one journalist. "It was a trial of race against race, and
when the fiery eloquence of Clarence Darrow famed Chicago criminal barrister of
Scopes evolution fame, broke down the inborn prejudice of members of the jury,
tearing from their eyes the superficial veil of Nordic supremacy, it appeared to be the
beginning of a new day for us.” After an emotional closing argument lasting more
than six hours, Clarence Darrow eloquently asking the jury to understand “I do not
believe in the law of hate, I may not be true to my ideals always, but I believe in the
law of Love, and I believe you can do nothing with hatred.” He was right, and the
jury agreed finding Dr. Ossian Sweet innocent in a trial that captivated the nation.

Indeed, Darrow had seemingly accomplished the impossible, but it did not
come without serious consequences to the Sweet family themselves. In the immediate
aftermath of the trial that had captivated the nation, there were jubilant editorials and

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391 Ibid.
393 Kevin Boyle, Arc of Justice: A Saga of Race, Civil Rights, And Murder In The Jazz Age, (New
hopeful musings by those who have long, and all too often, seeing the judicial system fail African Americans. The trial had other costs involved that the public didn't see which is often the case in very public trials. Dr. Sweet’s wife, pregnant with their child, had moved away to escape the circus atmosphere surrounding those terrifying events, and had unfortunately lost the child. Her own health failing the Sweet’s, it was observed, had been carrying a "cross of sorrow."394

Judicially the year 1925 was one that had captivated the American public in a discourse over the place of science in education, the place of race and labor, and how the fruits of those labors were to be enjoyed, and among whom. These are questions the nation still wrestles with to greater or lesser degrees. For Charles Houston, armed with a newly enlivened 14th amendment and a growing vision of what his life's work would entail, was developing a personal imperative that immersed in the use of the law to free people from the oppressive bindings of a Jim Crow society that ensnared African Americans. He had his own practice, a position with his father's practice, and moving forward into the next phase of his career, was going to be offered the position of Vice Dean of the law school at Howard. From this position, he would launch not only new cadres of superbly trained civil rights attorneys, but he would also launch his own successful onslaught against the pernicious impact of Plessy.

394 Ibid.
The wartime gains experienced by many African American laborers began to erode in the postwar recession, as the old rule of last hired, first fired, impacted many who were new to urban industrial areas due to the Great Migration and the promise of jobs. As bad as times were, however, jobs in the north still provided better pay, and conditions, even though those jobs were in many cases the least attractive to established white laborers. Numbers associated with the Great Migration are staggering, even by today's standards, accounting for the movement of 450,000 to 700,000 alone between 1914 and 1920.\textsuperscript{395} To be out from under the stifling oppression of the south, with its low wages, constant threat of forced labor, lynching, and the generalized extortion that surrounded agricultural employment, made laboring in the north preferable to staying put. Opportunities to join unions did expand, ever so slowly, with some unions like the American Federation of Labor allowing more blacks to enter, the United Mine Workers, but, all too often African Americans were left to start unions on their own.\textsuperscript{396}

Most notably the Brotherhood of the Sleeping Car Porters, lead by the demonstrative and articulate leftist, A. Philip Randolph was able to achieve success through his excellent leadership and the dogged determination of the Pullman Porters. This group of men, largely unknown, operated in a sphere of employment that provided a better living than menial wages, but often demanded that they travel long

\textsuperscript{395} Zieger, For Jobs and Freedom, 70-71.
\textsuperscript{396} Zieger, For Jobs and Freedom, 73-77.
distances overnight. These experiences as pointed out by Jack Santino, in his *Miles of Smiles Years of Struggle: Stories of Black Pullman Porter*, helped to foster an
“occupational folklore,” that strengthened and affirmed the resolve of fellow porters, who, together with Randolph, forged one of the first successful black unions.\(^{397}\)

Charles Houston and A. Philip Randolph later collaborated to integrate the railroad unions securing better wages and working conditions coupled with a full measure of equality.\(^{398}\)

It also happened that the next Supreme Court experience for Houston concerned, like his first case, a labor dispute involving a railroad company. This time the case involved a man Nephi Giles an employee of the Bountiful Brick Company, who on his way to work crossed over the railroad tracks of the Bamberger Electric Railroad Company. The brick company was adjacent to the railroad line and crossing the tracks was the quickest way to get to work without attempting a longer, more out of the way route. He had been warned a number of times to be careful crossing the tracks, by Mr. Ledingham, for whom he worked. However, the advice went unheeded and on Wednesday morning, June 17\(^{th}\), 1925, the hard of hearing seventy-four year old was struck and killed by a train.\(^{399}\)

His wife Elizabeth sued under the Utah Workmen’s Compensation Act of 1917, because his death was associated with work. The lower court ruled in her favor


\(^{399}\) “Nephi Giles Killed on Bamberger Track,” Davis County (Utah) Clipper, 19 June, 1925, [http://udn.lib.utah.edu/u7/davis3.1815](http://udn.lib.utah.edu/u7/davis3.1815)
and Bountiful Brick appealed up to the Supreme Court. Houston had been asked to join an old Harvard classmate, S. B. Horovitz, of Boston, to aid him in the case. The case was argued on January 18th, 1928 with the central question before the court addressing whether the law, "contravenes the due process of law clause of the Fourteenth Amendment."\(^{400}\) Houston and Horovitz argued for the obvious justice of the law and that the fact that he was not on the property did not matter.

The court found that Bountiful Brick administrators were aware that employees used this crossing, as the only practicable entrance and found that, "employment includes not only the actual doing of the work, but a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done. If the employee be injured while passing, with the express or implied consent of the employer, to or from his work by a way over the employer's premises, or over those of another in such proximity and relation as to be in practical effect a part of the employer's premises, the injury is one arising out of and in the course of the employment as much as though it had happened while the employee was engaged in his work at the place of its performance. In other words, the employment may begin in point of time before the work is entered upon and in point of space before the place where the work is to be done is reached."\(^{401}\) There was no Fourteenth Amendment violation as asserted by the plaintiffs, and Horovitz and Houston had won their case. Significantly the victory demonstrated that corporate exclusivity to the claim of Fourteenth Amendment protections, to the exclusion of the

\(^{400}\) Bountiful Brick et.al. v. Giles, 276 U.S. 154 (1928)

\(^{401}\) Ibid.
individual, was ending. This time a corporate claim to due process protection from an intrusive state, was set aside by the court when it measured the legality of a state law that unequivocally protected individual workers. It was the beginning of many successful appearances by Houston before the country’s highest court, and not the last associated with labor.

Houston, as it turned out, was right in his judgment identifying the *Gitlow* case as a turning point in the law with profound implications for labor and race. *Gitlow* not only proved to be a watershed moment for free speech in the United States, but it is also fair to say a watershed moment in the history of African Americans as Houston and others pursued a civil rights strategy. Historian August Meier, as was pointed out earlier, rightly clarified for the public just how radical using the law was at this point in time. Challenges to the existing power structure were not taken lightly by those in elite positions in American society and they were situated in pivotal points of power to frustrate attempts to alter that structure. For Houston, training lawyers from here on out, would take on a new fervor as he completed his study on the status of black lawyers nationally, and formulated his philosophy that lawyers needed to be “social engineers.” From here on out, the training of a professional cadre of lawyers would prove most fruitful.
Houston’s stature was growing and Howard University called on its talented law professor to take the position of Vice Dean in 1929, as the previous Dean had moved on to a position on the federal bench. He was tasked with elevating the status of the law school and Vice Dean Houston set about the task of getting the nation’s largest producer of African American attorneys accredited by the Association Law Association. The role Howard would play in preparing black lawyers for the betterment of all African Americans was very clear. “[The] Negro lawyer must be trained as a social engineer and group interpreter. Due to the Negro’s social and political condition...the Negro lawyer must be prepared to anticipate, guide and interpret his group advancement...[Moreover, he must act as] business adviser...for the protection of the scattered resources possessed or controlled by the group...He must provide more ways and means for holding within the group the income now flowing through it.”

African American attorneys were in short supply as Houston surveyed the status of African American attorneys. In an article entitled "The Need for Negro Lawyers," he pointed out a number of startling statistics. For example, in 1930 it was reported that there were 98 black attorneys in Washington DC, and 57 in Virginia. Houston in his article thought the numbers entirely specious reporting himself that in fact there were probably only 30 attorneys in Washington DC and the number in

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403 Ibid., 71.
Virginia, more accurately, should have been reported at fifteen.\textsuperscript{404} To add emphasis to his point he mentioned that there really couldn't be more than 100 African-American lawyers in the South, and that would mean that there was only one black attorney for every 236,208 African Americans in Alabama. And so, for example, for African American attorneys in Alabama would be responsible for each covering 12,999 square miles.\textsuperscript{405}

Houston started his task by taking aim at the weakest part of the law school, that being the accommodations. No organization would certify powers law school in its current conditions. To appropriately address the needs 20,000 square feet were remodeled for the 400 students who were in attendance and another 11,000 volumes were added to the legal library. These updates alone were a remarkable accomplishment, but he also called on the services of his old mentor, Roscoe Pound, and renowned litigator Clarence Darrow to come in and administer special lectures.\textsuperscript{406}

In October of 1929, Vice Dean Houston was giving a speech in which the Pittsburgh Courier reported that he "spoke of the new work of the law department not a radical departure from prior methods but as a new development of the work of their worth, a predecessor's, whose aims were to turn out as the finished product of the law school "social engineers," equipped to deal with all of the complex questions

\textsuperscript{405} Ibid., 52.
affecting the race in its social relations with one another, with members of other races and in fact, the state itself.⁴⁰⁷

Not all of the changes, however, were met with open arms. Some of the changes were perceived as rash and met with disdain, as some members of the faculty and students, thought that Houston was trying to turn Howard into a little Harvard. One of the changes that elicited protests occurred when he proposed closing the night school. Night school had always presented an option for those who worked during the day and thus could obtain a foothold in a professional class of employment while still maintaining employments. In one coordinated moment, the entire white faculty at Howard University resigned, but Houston had the full support of our universities president Mordecai Johnson, and the night school closed.⁴⁰⁸ The decision demonstrated for those at the university that Charles was pragmatic and capable of making tough decisions involving the marshalling of scarce resources for a successful law school. Although the resignation of the faculty was regrettable Howard’s administration was ready to move forward and was quite confident they could replace all of the members who have resigned with men of equal talent.⁴⁰⁹ All of the work put in by Houston paid off, when on December 30th it was reported in the New York Amsterdam News, that that Howard’s Law School, was the newest member of the American Association of Law Schools.⁴¹⁰ Having accomplished his goal of accrediting Howard's Law school, he reflected on mission for the law school in his

⁴⁰⁷ "Musolit Club Honors Dean’s," The Pittsburgh Courier, October 19, 1929, 6.
⁴⁰⁹ Ibid.
article on *The Need for Negro Lawyers*. He stated that "the lines are drawn however, and neither the law schools nor the lawyers can retreat. The great work of the Negro lawyer in the next generation must be in the South and the law schools must send their graduates their and stand squarely behind them as they wage their fight for true equality before the law."\(^{411}\)

This work would be put to the test as the nation further sank into the Great Depression, which was disproportionately felt by African Americans exacerbated by a political economy that placed wrenching limitations on the average black worker. There were however, cracks in the political and legal world that caused Houston and others seeking impartiality glimmers of hope. On a personal note, in 1928 Houston’s cousin, William Henry Hastie, had followed in his footsteps, first as a student at Dunbar, then Amherst, and finally at Harvard’s law school, had been selected to serve on the Harvard Law Review staff.\(^{412}\) And nationally, Houston happily attended the swearing in of Oscar De Priest in the spring of 1929, the first black man to serve in the lower house in twenty-eight years from the first district of Illinois.\(^{413}\) These were happy accomplishments, the accreditation of the law school, his cousin serving on Harvard’s Law Review, and De Priest’s election. Unfortunately, moving forward the stark threats from a Jim Crow world would bring Charles Houston back into the Supreme Court, and into the National Association for the Advancement of Colored People, as their chief legal counsel, leaving his position at Howard behind.

\(^{411}\) Houston, "*The Need for Negro Lawyers*," 52.
\(^{412}\) "Hastie on Harvard Law Review Staff," The Pittsburgh Courier, September 29, 1928, 1.
\(^{413}\) "Oscar De Priest Sworn In," *The New York Amsterdam News*, April 17\(^{th}\), 1929, 1.
CHAPTER VII

THE POLITICAL ECONOMY OF SCOTTSBORO

During the 1930s Charles Hamilton Houston focused on the best strategy by which to confront Plessy, and in so doing would add flesh to a skeletal notion posed by Nathan Margold, early counsel to the NAACP. In essence, Margold’s idea was to make segregation too expensive to maintain, causing the duality that existed in the United States to collapse. What Margold lacked was a practical approach, which Houston would provide with his understanding of the need for a comprehensive stratagem including the workplace, the courts, and the political arena, through which to address the goals of African Americans. Houston’s crucial involvement in not only the Scottsboro case, but also a case involving Texas primaries, as well as the Jess Hollins case, (which came to be known as the second Scottsboro) offers penetrating insights into the application of his strategy. By examining the intersections of all three areas, we begin to glimpse the maturation of a lawyer honing his skills, practicing what he had so often preached to his own students, that a lawyer is either a social engineer or a parasite. The political economy of the 1930’s, which was charged by the increased competition for scarce jobs, became magnified by interracial competition, and became explosive when sexual boundaries surrounding race were breached. Houston’s already-focused attention to the plight of working blacks
during the Great Depression was heightened by the arrest of nine young men in a small town in Alabama.

Taking place three years into the depression, the Scottsboro Affair exemplifies the interplay between groups and individuals as they confronted segregation, negotiating the depths of the depression, and the search for work. Through this case, two groups, the NAACP, with its legal wing, and the Communist Party, with its legal arm, the International Labor Defense, competed for the allegiance of African Americans. This competition also sheds light on the particularly distressed state of laboring blacks in the south, as workers weighed the issues of class, race, and allegiance as part of a vigorous discourse over the future. The debate centered over the best way to move the condition of freedom forward in the midst of an economic catastrophe. Houston felt the NAACP had neglected workers and the poor in general, and that the Communist provides using poor blacks (and whites for that matter), to advance their own agenda.\textsuperscript{414}

Scottsboro was an important step forward in the evolution of the judicial philosophy of incorporation, adding the Sixth Amendment protections from state infringement. It also represented a tremendous shot in the arm for the Communists, as they eventually argued on behalf of the accused in the Supreme Court. The NAACP, which originally challenged the Communists over representation of the accused, lent its resources to the cause of their freedom, and forced it to reevaluate the organization's strategy in the south. The resultant litigation from the case led to

the Supreme Court decision, *Powell v. Alabama* (1932), which incorporated the right of all citizens to competent representation at trial. Houston's own understanding of what was happening to the young men from a judicial standpoint is noteworthy, and informative strategically as he scrutinized the International Legal Defense (ILD) as it embarked on the defense of the Scottsboro Boys. The aggressive move on the part of the Communists to use the Scottsboro affair as a way to insinuate itself further into the leadership of African Americans is illustrative of the way the NAACP itself was beginning to rethink its place at the forefront of the civil rights movement.

By the end of 1930, Howard University's law school was firmly established, and its legitimacy anchored by the Association of Law Schools' acceptance. Charles Houston had worked assiduously to assemble a first-rate staff and student body in order to prepare a new cadre of lawyers, capable of mounting an attack on *Plessy v. Ferguson*. This entailed not only directing the law school, but also taking on outside projects suggested by those who understood that his abilities placed him at the top of the legal profession. At times he was seemingly ubiquitous, as he committed himself to various cases, regardless of pay or prestige. Beginning in 1931, he worked in succession to free the Scottsboro Boys, argue against all-white primaries in the south, and fight against all-white juries in the Crawford case, which made national headlines. From there he would launch campaigns against discrimination in graduate schools and teacher pay, and attend the Second Amenia Conference, which drew

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many of the intellectual elite, and where his voice emerged as one of a handful offering realistic advice on how the NAACP should move forward in the movement against inequality.

With his successes in the first half of the 1930’s multiplying in an impressive fashion, the NAACP would finally convince Houston to join its ranks as the organization’s first full-time counsel. After moving to New York in 1935, he would spend the next four years orchestrating a devastating strategy aimed at the legal underpinnings that supported Jim Crow. With new resources at his disposal, he confronted head-on the issues facing African Americans, from the horrors of lynching, to education and the vote, and underlying everything else, the right to work.

While Houston’s work has been much lauded, the vast scope of his strategy is often ignored. In a speech to the International Labor Defense in July of 1939, he reflected on the 1930’s, but also spoke progressively when he informed the crowd that the strategy to free blacks needed to be comprehensive. “We are taking these fights in their stages, one by one. First, the fight for physical security; next the fight for some semblance of order and justice in the processes of the administration of the Government. Third, the fight for equal education, to furnish America with a class of citizens fully entitled and fully able to cope with all the difficulties and problems; fourth, to bring the Negro workers into the organized labor movement with full protection against discrimination; finally to give to the other liberal forces of America worthy recruits for the struggle to make a liberal America, to make this country a
secure home for all people without regard to race, color, or creed.”\textsuperscript{417} Multipronged and multi-classed, Houston’s offensive took advantage of both mass politics and legalism as the nation’s attention was drawn to the bucolic town of Scottsboro, Alabama.\textsuperscript{418}

Scottsboro and Labor

In the spring of 1931, twelve young black men hopped a train with the hope of securing jobs in the next town. As they flung themselves up and into the car, they found seven white men and two white women already on board. A fight quickly ensued, resulting in the seven white men being thrown off the train. When the train arrived in the small town of Scottsboro, Alabama, the white men had already complained of the assault to the local police, and the authorities were waiting for the young black men. While they were being interviewed, the two women in the car, Ruby Bates and Victoria Price, pressed charges against them. Dressed in overalls, the out-of-work mill workers claimed to have been repeatedly raped by the black men. From that moment the travails of the young men would capture the attention of

\textsuperscript{417} CHH, “Speech to the ILD, July 8, 1939,” Box 163-17 Folder 23, Manuscript Division, Moorland-Spingarn Research Center, Howard University.

\textsuperscript{418} Kenneth W. Mack, “Law and Mass Politics in the Making of the Civil Rights Lawyer, 1931-1941, The Journal of American History, Volume 93, No. 1. Mack argues that there was an active debate between two camps, one arguing for mass politics (the ILD) and the other a legalistic approach (the NAACP) with the legalistic approach winning out. However, Houston’s strategy from the early 1930’s on represent a more inclusive strategy outlined in this chapter.
national and global media, as race, labor, and the law took center stage in the United States.  

While the Scottsboro boys, as the press dubbed them, and their many trials have been well documented in American history, the centrality of labor in their circumstances, as well as their case, is often overlooked due to the sensational nature of the sexual allegations. All those involved, white, black, male and female, were refugees of the depression, although blacks experienced harsher deprivation than others. Perhaps, then, it was due to those sensationalized charges of rape, that the intertwining narratives of labor and race were ignored. The unfortunate reality for those young men lay in the fact that far before they hopped that train looking for work, the deeply ingrained political economy of the South was not merely unfair to blacks, but cruel in its callousness and complete disregard for human rights.  

Charles Houston was well aware of the long history of political and economic suppression of black workers, noting the centrality that black labor has always occupied in American history; indeed in his mind black labor had always held the balance of power. In a speech to the International Labor Defense Conference on July 8, 1939, at the Hotel Hamilton in Washington D.C., Houston told its members, "some of you who know little about Negroes representing the balance of power in America, it might interest you to know that the fascist slaveholding oligarchy in the Civil War got down to such desperate straits in 1865, that a Negro regiment paraded in  

Confederate uniform in the city of Richmond."\textsuperscript{420} His illustration of the South's last
ditch efforts to salvage the war was tantamount to the South's acknowledgement of
the centrality of black labor in any successful war effort. Notwithstanding the latent
southern concession toward the African American balance of power, southern states
quickly sought to reverse any black political gains in the workforce after the war.

One of the earliest examples of the South's attempts to counteract the gains of
African Americans is evident in its reaction to the Civil Rights Act of 1866. Almost
immediately, South Carolina instituted Black Codes restricting the labor of African
Americans. A 1929 article in \textit{The Crisis}, described the stultifying nature of these
efforts, insisting "that Negroes should work from sunrise to sunset, every weekday
with only a short interval for breakfast and dinner and that they should rise at the
dawn of the morning in order to perform chores prior to going to work at sunrise."\textsuperscript{421}
These efforts to control African American labor were part of a long history of
nullification and interposition that also resulted in the repudiation by 10 of 11 southern
states (excluding Texas) of bond debt secured under Republican congresses. \textsuperscript{422}

So, not only was the labor of blacks legally restricted with the exertion of a
new political cadre, but the economic health of the South was also compromised by
its refusal to pay its debts.\textsuperscript{423} At a time when the South was in desperate need of
capital to expand its agricultural and industrial bases, it was restricting the free flow

\begin{itemize}
\item \textsuperscript{420} CHH "Speech to the ILD, July 8, 1939," Box 163-17 Folder 23; Manuscript Division, Moorland-
Spingarn Research Center, Howard University.
\item \textsuperscript{421} William T. Andrews, "the Negro in law," \textit{The Crisis}, November 1929, 369.
\item \textsuperscript{422} Ibid.
\item \textsuperscript{423} Richard Bensel, \textit{The Political Economy of American Industrialization, 1877-1900} (New York:
Cambridge University Press, 2000), 93.
\end{itemize}
of labor and capital by defaulting on its fiduciary responsibilities. This obvious economic incongruity was rooted in the long history of states’ rights; due to the federal nature of the United States republic, the South was able to escape financial consequences. The federal Constitution does not allow the central government to force states to pay foreign debt, which left foreign creditors with only one option, that being the denial of future credit.424 Explaining Louisiana’s default, Alexander Johnston, professor of jurisprudence and political economy at the College of New Jersey (later Princeton University), noted that Chief Justice Waite of the United States Supreme Court definitively stated, "neither was there when the bonds were issued, nor is there now, any statute or judicial decision giving the bondholders a remedy in the state courts or elsewhere, either by mandamus or injunction against the state in its political capacity, to compel it to do what it has agreed should be done, but what it refuses to do."425

The South’s refusal to pay its debts following the Civil War was observably detrimental to the region’s economic growth. There is, however, some debate regarding the extent of the impact. As Richard Bensel has written with regard to the history of the South, the delinquencies cannot be considered a contributing factor to its economic demise. In fact, given the condition of the South's economy during reconstruction, refusal to extend credit was "redundant." They simply did not have the capital to engage the market, complicating that fiscal reality was the fact that

424 Ibid., 94-95.
Northern capital was, understandably, indifferent. Bensel’s point with reference to the short term political economy of the South is well taken, however, to disregard the longer historical view of the region’s political economy is to ignore the overwhelming economic hurdles the South’s distressing past presented to possible creditors. The downward economic spiral in the post Reconstruction Era also left them unable to gather enough capital to charter their own banks. Starved for capital as they were, many lenders were encouraged to initiate the crop lien system, which disproportionately impacted African American farmers, and raised woefully little capital for bankers.\(^{426}\)

In order to restrict labor costs and contain blacks, a number of extralegal measures were taken to keep them tied to the South. African Americans faced the startling reality that three conditions of labor existed; free, enslaved, and coerced, under the penalty of imprisonment or the ever-present threat of lynching. Rigidly enforced vagrancy laws entrapped poor blacks, primarily male, effectively reinstating the peonage system. It had become common practice on the part of local police forces to arrest black men of any age who could not demonstrate residency or possessing enough money to avoid the charge of vagrancy. Richard Blackmon, in his superbly researched account of the “re-enslavement” of African Americans, demonstrates that by 1930, half of Georgia’s 1.1 million blacks lived under the threat of the chain gang. Under the control of whites, blacks were "Unable to move or seek employment elsewhere, under threat that doing so would lead to the dreaded chain

gang." While it was true that in 1908 Georgia had outlawed the selling of persons in order to recover debts, by 1930, there were some 8,000 men mostly black working in chain gangs were in fact sold into servitude.  

W. E. B. Du Bois framed the circumstances of many blacks in an article published in *The Crisis* in December 1931, in which he laid bare the truth concerning African American laboring life. Du Bois pointed out that the wages for a common laborer were 50 to 60% of those earned by a white laborer, and white skilled or semiskilled laborers could expect 65 to 85% as much. Additionally, Du Bois declared that in 1910 the economy for African Americans was half as developed as that of whites, increasing to three-fifths by 1920, and four-fifths by 1930. On the surface, Du Bois' statistical assessment demonstrates increasing development within the economy for African Americans, as black businesses expanded in the era of the Great Migration. What Du Bois actually revealed to everyone however, were the statistical realities for African American laborers, whose wages were artificially suppressed by a political structure that continually sought to constrain their earning potential. Jim Crow labor created a number of advantages for owners north and south.


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428 Ibid.
by 1931 the South was a major economic force, producing 72% of all the cotton processed in American mills, and possessing 53% of all the active spindles in the United States. It was also a major contributor of iron ore, and produced half of the coal used by the nation at that time. Black workers shared in none of the fruits of their labor through, and Du Bois noted that "by the condition of its laboring class, and by the power of its capitalist exploiters, it [the South] is headed toward making every mistake and committing every crime that organized industry has committed in the past." He went on to quote Herman Feldman, who explained, "the whole South presents a series of rigid barriers, social, economic and political, influenced by actual regulations and supported by almost united public sentiment." Such was the place of race in American society and industry.

As we have seen, the political structure of the South, from the post-Reconstruction Era, to the 1930s, provided stultifying impediments for African Americans attempting to work and earn a living wage for their families. These obstacles ranged from the institution of black codes almost immediately after the Civil War in 1866, as witnessed in South Carolina, to the abhorrent practice of lynching as a means to intimidate and restrict freedom of movement, the reinstitution of peonage labor, and even outright enslavement. The use of local police forces to gather labor at the state and local levels, together with the federal government's use of work-or-fight legislation to forcibly redirect black workers, made simple movement to secure employment perilous. All of these efforts on the part of the

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431 Ibid.
white elite made the South a particularly dangerous place in which to live and work during the Depression. The nine young men learned this first-hand when they were arrested in Scottsboro, and Houston would lend his appreciable talents to winning their release.

Armed with a piercing intellect, Charles Houston was able to see through the facade of those accusing the young men of rape. He recognized that the case was inexorably linked to the freedom to work and earn a living in the face of forces that sought to artificially, or extralegally restrict movement. Re-examining the Scottsboro incident in a speech to members of the International Labor Defense, the legal arm of the Communist Party in the United States, Houston encouraged the audience to support candidates who were liberal and progressive. He explained that this was necessary because, "Those boys were on a freight train going from one place to another looking for work. Although the particular technique was a judicial lynching, the actual effect is the same as though a mob had taken them and strung them on a telephone pole -- -- it was an attempt to keep the Negro farm worker and casual workers in subjection, to tie them down to their localities and prevent them migrating in search of better work, shorter hours, and more pay, and to isolate them from other workers of America." Scottsboro drew Houston even closer to the needs of working class African Americans as he understood their plight to be his own.

Houston believed that this incident was singularly linked to the freedom of movement to search for a job, that it was just another in a long line of attempts by

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432 CHH, "ILD speech, July 8, 1937," Box 163-17 Folder 23; Manuscript Division, Moreland-Spingarn Research Center, Howard University.
whites to restrict the movement of free labor, a notion which has been borne out in more recent research. In her recent history of the NAACP, Patricia Sullivan emphasizes that those nine young men, ranging in age from thirteen to twenty years old, were in fact looking for work, not trouble. She writes, “The women were unemployed cotton mill workers from Huntsville, Alabama; the young men were from towns in Tennessee and Georgia. Poor, adrift, and looking for work…” The issues of race and labor, comingled with the explosive element of interracial sexuality, were not uncommon in the South of the early 1930s. African Americans could count on one consistent representative of their interests in the South, where the NAACP had little representation, and that was the Communist Party. Houston not only understood why Communism appealed to the poor, but appreciated what it had done for blacks by turning “the race issue into the class issue.” The Communists posed a serious challenge to the NAACP in the South during the 1930’s, creating a competition between the two groups. The Scottsboro Affair presents an opportunity to consider Houston’s pragmatism from both the short and long views of the struggle for freedom.

434 Ibid.
The competition between the two organizations had become more intense with the initiation of the cases, pitting the Communist Party and its legal arm, the ILD, against the NAACP and its cadre of lawyers. During this period Houston would answer the call even though he was busy with his duties as Dean of Howard's law school, and with consulting and representing cases for the NAACP whenever Walter White needed him. This presented something of a philosophical quandary; on the one hand, he always supported the NAACP in its efforts to formulate a national strategy, however, Houston was more than a little disenchanted with the weakness of the NAACP’s attempt, particularly in the South. To that end, he understood why Southerners would be drawn to the Communist Party. They were doing the yeoman's work of organizing, informing, and educating blacks in the South as to what their rights were, and also how to assert those rights in the workplace.436

Houston took on the issue of leadership in a speech that he presented at the YWCA Convention in Philadelphia on May 5, 1934. Addressing the state of flux in national leadership, he declared that the NAACP was the “most effective fighting force in the Negro group,” poked at the National Urban League, calling it “largely opportunist,” and quipped that the YMCA should be known as the “Young Men’s Conservative Association.”437 He went on to identify “the three most significant

436 Ibid.
events which have affected Negro psychology within the last twenty years.” WWI, he explained, taught “Negroes organization, discipline and the unimportance of death,” the Garvey movement “made a permanent contribution in teaching the simple dignity of being black.” It did not matter to Houston that Garvey and the Universal Negro Improvement Association had a checkered past, and he told the audience that “For my purposes it is immaterial whether he was a charlatan or fool, Marcus Garvey by turning the Negro’s attention to the beauty of the color of his own skin, has had a profound influence on Negro thought.” However, he devoted considerable space in his address for the role of Communism, revealing a great deal about what the Communists meant to blacks, and what he thought of their place in the leadership of African Americans.

We know that the idea that the Communists were able to turn the issue away from race toward the issue of class appealed to Houston. He credited the Communists with being “…the first, at least in recent times, to have appealed to the masses, as distinguished from the classes. Whereas all prior approaches to the masses had been paternalistic, the Communists came and walked among them, like the disciples of old, and offered them full and complete brotherhood, without respect to race, creed or previous condition of servitude. Finally, the Communists have been the first to fire the masses with a sense of their raw, potential power, and the first openly to preach the doctrine of mass resistance and mass struggle: Unite and fight.”

www.law.cornell.edu/houston/housbio/htm

438 Ibid.
439 Ibid.
the final analysis, Houston did not think that the Communists would be accepted by African Americans because of their predilection toward conservatisms, and the fact that they were a rather recent phenomenon. Charles left the crowd with a final thought; the Communists had permanently influenced the way future leaders would address the needs of African Americans. It was his belief that no leader could “advocate less than full economic, political and social equality, and expect to retain the respect and confidence of the group. Some day the Scottsboro Cases are going to be acknowledged as a milestone in the history of America.” He was right, of course, and the struggle that lay immediately ahead was how the two organizations, the ILD and the NAACP would approach the coming trial.

Due to the number of defendants accused in the rapes of Victoria Price, aged twenty, and Ruby Bates, seventeen, four trials were held in which a local lawyer defended the young men. Unsurprisingly, each of the cases resulted in a guilty verdict and subsequent death sentence, with the exception of the 13-year-old, who received a life sentence following his conviction. Accusations began to fly between the ILD and the NAACP over the motivations of each group. Some of the NAACP’s more prominent voices, that of W.E.B. Du Bois for example, chided the Communists for their rabble rousing and vocal remonstrations. This would be one of the first times that Houston’s opinion would run contrary to that of Du Bois, but not the last. While he did not aim his criticism directly at Du Bois, he did reply to the editor of the Amsterdam News, William Pickens, in May of 1933, stating acerbically that the

440 Ibid.
author "seems to think justice for the Scottsboro boys can be obtained in Alabama
without outside pressure. Personally I do not believe it.... Yet the boys are to be
saved, they must be saved by public opinion." 441

It is understandable that communism was attractive to African Americans, due
to the extent of the depression, the deplorable conditions in which most African
Americans lived, and the nature of the oppression that existed. There was little
wonder that capitalism was under severe scrutiny, and he Communists offered
themselves as a legitimate political option, since neither the Republicans nor the
Democrats seemed to be actively protecting the interests of blacks. Du Bois
understood this appeal, particularly after the ILD's offer to manage the young men's
appeals. But he seized the opportunity to bolster the cause of the N.A.A.C.P.,
systematically taking the Communists apart by attacking their competence, writing
forcefully, "unfortunately American communists are neither wise nor intelligent." 442
To his mind, the Communists had clearly bitten off more than they could chew, and
attempting to defend the Scottsboro boys and garner the limelight, they were in his
words, "slinging mud," reinforcing the claim that the NAACP was clearly aligned
with the capitalist. 443

Du Bois, however, was not yet through with the Communists. He continued
his fiery rhetoric, using The Crisis to air his invective, and in a September, 1931
editorial he castigated the Communists for threatening judges, and calling for white

441 Ibid., 150-151.
443 Ibid.
Southern workers to take action. He went on to write "the final exploit at Camp Hill (Alabama) is worthy of the Black hundreds, whoever promoted it: black sharecroppers, half-starved and desperate were organized into a ‘Society for the Advancement of Colored People,’ and then induced to protest against Scottsboro." If they were responsible, as Du Bois had assumed they were, their culpability was contemptible in the face of existing social, cultural, and political realities. Initially the types of actions Du Bois outlined proved threatening to the NAACP, but it was Houston who would take the competition between the two organizations and use it to drive much needed reform in the NAACP’s activities.

The tension between Communists and N.A.A.C.P. supporters also raged in the black press. George Schuyler, the renowned editorialist of the Pittsburgh Courier, engaged in a war of words with Eugene Gordon, a staff writer for the Boston Globe, after he publicly stated that the I.L.D. had never won a case. Insinuating that they had no business commenting on the life or death circumstances of the Scottsboro boys, Schuyler skewered Gordon, and the Communist Party by implication, in The Pittsburgh Courier’s editorial pages. Gordon had accused Schuyler of lying when he said that the ILD had never secured a victory. He countered by correcting Gordon, clarifying that "he should've stated that they had not won a victory for any black clients. And, that the only real "victory" that they could claim was in the case of a man, who had since been convicted and given the death penalty sentence to fry in the

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444 Ibid., 314.
445 Sullivan, Lift Every Voice, 151.
electric chair.” All of this, Schuyler claimed, “while collecting funds from workers, both black and white, in support of mediocre talent.”

While the ILD had clearly failed in Schuyler’s eyes, he was quick to point out the numerous victories claimed by the NAACP when faced with the same sorts of impediments the as the ILD. For example, according to Schuyler the NAACP could be credited, for winning many extradition cases, freeing the Elaine rioters, the nationally prominent freeing of Dr. Sweet in Detroit, and winning the release of the men of the 24th infantry in Houston during WWI. His observations were irrefutable, and cut Gordon's argument to the core. He went on to flay Gordon with one last indictment, arguing, "Gordon holds it is a dangerous illusion to tell Negro workers that justice may be one in capitalist courts, as does the NAACP. If this be true, then why does the ILD collect funds to defend Negroes in capitalist courts? Why if this be true, does it still defend the Scottsboro boys, the Alabama sharecroppers, and Angelo Herndon?" George Schuyler rightly indicated that there was no difference between the ILD going to court, and the NAACP going to court, and that in light of the NAACP’s successes they should end their criticism.

In closing, he accused Gordon and the Communists of using blacks as martyrs for their own cause. Schuyler informed his readers that blacks would be much better off alive, siding with the NAACP, rather than stoking the flames of fascism, which, in his opinion, ignorant Communists the United States, and globally. He made it clear,

446 George Schuyler, *Pittsburgh Courier*, Saturday, June 10, 1933.
447 Ibid.
448 Ibid.
that the same irresponsible Communists in Germany were siding with Hitler and
 crushing the social Democrats, who in turn found themselves crushed, the victims of
 fascism. Transnational influences were evident to even the casual observer of race
 relations, from the experienced Du Bois who called for Pan African Summits, to the
 less experienced, like Houston who commented on the obvious, and detrimental
 effects of colonialism in Africa. But here in the early 1930s the Scottsboro boys were
 receiving international attention, and it was probably inescapable that the politics of
 Stalinism and the rise of fascism, as well as Hitler in Europe, would make their
 collective way into the domestic discourse here in the United States.

 Given the depths of the Depression and the lack of any meaningful policies
 coming out of the Hoover administration on issues of race, minds like Du Bois,
 Schuyler, and Charles Houston were reinforced in their thinking that the courts were
 the strongest and most direct route to freedom at that time. Considering the
 circumstances, Du Bois observed, "American courts from the Supreme Court down
 are dominated by wealth and big business, if they are today the Negros' only
 protection against complete disenfranchisement, and segregation." There would be
 no letup; there would be no backing away from the gauntlet thrown down by the ILD
 and the Communists in their competition for leadership of African Americans in the
 United States. In a parting shot to all who would listen, W.E.B. Du Bois exclaimed

\footnote{Ibid.}
that the NAACP deserves more "than a kick in the back from the young jackasses who are leading communism in America today."\textsuperscript{450}

There would be little doubt under the aegis of the NAACP and Du Bois where the line was drawn in the leadership of African Americans, and they did not hold their fire from the Hoover administration either. It was clear to many that Herbert Hoover had done what so many Republicans had with regard to race in the South, which was to register the status quo through its many appointments. Hoover had backed completely for example, the "lily-white" Republican Party in the South, refusing to consider "any person of Negro descent, no matter his merits or accomplishments," and with regard to labor, he appointed William N. Doak Secretary of Labor.\textsuperscript{451} Doak belonged to the brotherhood of Railroad Trainmen, and his appointment was applauded by many white laborers and unions, but the railroad brotherhoods had a horrifying record with regard to race and employment, a point blacks were quick to note. Defending himself from such attacks, Doak responded in \textit{The Crisis}, claiming that the working conditions for African Americans had actually improved. "Accordingly," he went on to say, "you will find each bureau and division of the federal Department of Labor available to all workers and employees of America in matters pertaining to labor, including the groups to which you are especially interested, for the purpose of fostering, promoting and developing the welfare of wage earners of the United States, improving their working conditions, and advancing

their opportunities for profitable employment." It had the ring of a perfunctory bureaucratic response, and never addressed the charges head-on, as was consistently the case with the Hoover administration, motivating many African Americans to vote in huge numbers for the Democratic nominee in the upcoming election.

With the Communists slingling at the NAACP, and the NAACP's noble efforts to fashion reasonable representation for the Scottsboro boys in the midst of such a politically and racially charged atmosphere, Charles Houston did not sit idly by. He took it upon himself to raise awareness for the Scottsboro boys by organizing a rally two years later, inviting Ruby Bates, then 19, to speak. The rally, as reported by the Washington Post on May 7, 1933, included several thousand African Americans and hundreds of whites, who mingled in anticipation of what she would have to say. Obviously nervous, but committed to her appearance, the young Alabama mill worker told the audience that, "all nine Negroes, accused in Scottsboro, Alabama of an assault on her and another white woman were innocent." The meeting of the National Scottsboro Defense Action Committee was held at Mt. Carmel Baptist Church in Washington DC, where the crowd heard her clarify the past, declaring, "friends, I'm glad to say that I can tell the truth. The nine Scottsboro boys are innocent."

As the crowd listened intently to hear what she would say following her open acknowledgement of the young men's innocence, they witnessed a young woman

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454 Ibid.
steel herself to continue her mission. Bates went on to say, as reported in the *Washington Post*, "they were framed up at the Scottsboro trial, not only by the boys and girls on the freight train, of which I was one, but by the bosses of the southern counties." She said her life was threatened repeatedly during the first trial of the Scottsboro boys, and she was pressured to testify against the defendants. Following the first trial however, she recanted her initial testimony subsequent to "confessing" to Dr. Harry Emerson Fosdick, New York clergyman. "Friends,” she said, “I wasn’t thinking of my own life, it was the lives of those innocent boys." According to the newspaper the speech was followed by a planned march of upwards of 5,000 people to the White House.\(^{455}\)

In addition to the nationally-known Houston, the Scottsboro boys were supported by many prominent labor organizations and concerned citizens. In New York City an event was organized at Park Palace featuring Scottsboro movies. There were many speakers, including the International Workers Order, the working-class fraternal organization that sponsored the event, Joseph Brodsky of the ILD and member of the defense, the Reverend Adam Clayton Powell, William Paterson, from the National Secretary of Labor Defense, and A.J. Muste of the Conference for Progressive Labor.\(^{456}\) Houston was undeterred from participating with groups that may have been institutionally at odds, because as he had previously stated, cooperative politics were called for in order to achieve the young men’ release. He was never an adherent to strict “legalism” (use of the courts), and would often

\(^{455}\) Ibid.

incorporate multiple methodologies to achieve his goals. Pragmatism would characterize Houston's philosophy throughout his legal life, and often he used triangulating approaches to achieve a desired end.

Consideration of the Scottsboro Cases from a labor perspective helps to untangle the political, social, and cultural milieu which accounted for the arrests of the young men. The political economy of the South had presented them with a particularly harsh reality, making it impossible for them to stay in one area and secure a living. Leaving their hometowns, as many young black men did during the depression, was in part the result of economic push forces which led them to jump a train in search of a livelihood. These were not deterministic forces, quite the contrary; their actions were the foreseeable result of people with very few options pushed to the edge of subsistence. It was the intermingling of these political, economic, and racial realities that alternately riveted and repelled the citizens of the nation as the Scottsboro boys and their cases moved toward the highest court in the land.

It was also true that Charles Houston himself was moving again toward the highest court in the land. His life and his time were becoming increasingly monopolized by cases surrounding labor and the civil rights of African Americans. Clear to Houston was the indispensible power of the franchise in determining the fates of African Americans, whether voting for sheriff, mayor, the zoning board, or any of the everyday functionaries with the power to determine the quality of life for people in both rural and urban areas. The vote and the individual ability to exercise it
determined crucial outcomes to either the detriment or betterment of individual lives. The defense of the Scottsboro boys played out over the years, handled by the ILD until the last man was released in 1950. In 1934, splitting time between his duties as dean of the Howard’s law school, consultant to the NAACP, private practice, special causes, and assorted other leadership roles, Houston deliberated before committing to any other organizational liabilities. Surveying the legal necessities facing African Americans, it was not long before his attention was drawn to the political circumstances surrounding primary participation in the state of Texas.

The Call of the NAACP

For most people, becoming the dean of a law school would be the crown jewel in an esteemed career. Houston, interested in furthering social justice, did not think that way, and so the 1930’s became an ever more complicated time, as he was pulled in many directions, arguing three nationally celebrated cases, participating in the second Amenia conference, and finally leaving behind a career at Howard for another with the NAACP. In Texas it had long been the practice to exclude African-Americans from primary voting, and Democratic Party leaders had developed an effective strategy to preclude blacks from exercising the vote in any meaningful manner. The Texas Democratic Party accomplished its policy of exclusion under the

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457 Segal, In Any Fight Some Fall, 39.
pretext that political parties were voluntary organizations, and therefore the participants in a party could be constitutionally limited to fit a party’s profile.

Long a sore point for the NAACP, and African Americans nationally, Texas was not alone in its tradition of all-white primaries, however, it was more zealous and barefaced in its policy of exclusion, making it a fitting candidate for the courts. Houston agreed to take the case of Dr. L.A. Nixon, which had in its early stages depended heavily on the contributions of two young, talented black attorneys from Texas, J. Alston Atkins and Carter Wesley. The pair had successfully ushered the case through the pitfalls of the Texas legal system, and graciously allowed Houston, with his prestige, to first-chair the case. The legal strategy of forcing states to maintain equal accommodations followed Houston’s own philosophy of reversing Plessy, political parties however, posed a problem of another kind. On one hand, any individual in the United States could clearly choose his or her own party. So too, if a group of people felt as if they were underrepresented, they could create a party of their own with their own platform.\footnote{Charles Hamilton Houston, "The Need for Negro Lawyers," \textit{The Journal of Negro Education}, 52.} The Texas Democratic Party used this policy as its primary defense for excluding black voters.

Houston stripped away this thinly veneered excuse to reveal the decaying practice. As Houston prepared his arguments for the court it was evident to everyone that this is, in fact, a two-party country. Nixon himself had gone through the process of registering in the Democratic primary in 1928, and was denied because of his race, which was permissible under existing Texas law. Nixon then filed suit against an El
Paso election official named Janus Condon, but his case was denied at the state level because the Texas Supreme Court found the Texas statute to be legal, under the notion that the association was voluntary.459 This notion of voluntary associations would come into play in the 1940s, as Houston assailed that argument again when it was offered by the railroad brotherhoods. In 1932 though he took aim directly at the state of Texas, and demonstrated to the court that its law was clearly unconstitutional, because to participate in politics in any substantive way intently necessitated the ability to involve oneself at the local, state, and federal levels in primaries. To be denied that basic exercise in one’s civic privileges went beyond the allowable vicissitudes of maneuvering throughout the political landscape. The court agreed with his arguments, and Houston was able to return to his desk as dean of Howard’s law school and resume the duties of that job.460

_Nixon v. Condon_ made it easier for those trying to participate in the political process enriching the lives of ordinary people attempting to make a difference. But, these newly won rights would have to be diligently guarded and defended. In 1934 Dr. Nixon found himself appealing to Walter White and Charles Houston for help in confronting the obstructionist tactics Texas employed. This time Nixon was handed a ballot marked “Colored,” that was cast but not counted.461 At about the same time a Federal judge in Louisiana ordered an injunction in New Orleans to stop the removal of names from voter lists, and voter intimidation. For this occasion, Nixon and those

460 Nixon v. Condon, 286 US 73, (1932 )
in New Orleans were armed with Supreme Court precedent, which was declared in the injunction, issued by the Federal Judge in New Orleans, and included by White and Houston in their discussion with Assistant Attorney General Joseph B. Keenan. Due to Houston’s victory, offenders were now facing the prospect of violating sections nineteen and twenty of the U.S. criminal code, a federal offense. Charles was now free to turn his attention to the issue of teacher pay, an issue that Thurgood Marshall had raised more than once with his former mentor, but the right case had eluded them.

One of the tremendous pleasures of any professor or dean, is the progression of one’s student to successful colleague. Houston had watched with pride as cadres of young black attorneys began making their marks in the courts, advancing the status and circumstances of the race. Thurgood Marshall was becoming all Houston could have hoped for. Even with all of his talent, the young Marshall encountered some difficulties at the start of his practice. The country was in the midst of the Depression, but he had already begun to make his professional mark, speaking on key occasions. He had broached the topics of teacher pay, and graduate admissions in Maryland to with an eye toward taking on cases he had been following for years. Black teachers in many states faced discrimination in pay based on the color of their skin, of this Houston was well aware, and the University of Maryland’s Law School

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462 Ibid.
was denying admissions to qualified black students.\(^{464}\) What they needed was just the right kind of case to risk going forward with the pursuit of change.\(^{465}\)

The NAACP itself, while still cautiously celebrating a fresh victory (\textit{Nixon v. Condon}), was facing a bit of a crisis as Joel E. Spingarn, its longtime president, for reasons of his own tendered his resignation. Tensions mounted within the NAACP among the leaders, young and old, over the appropriate strategy by which to pursue rights too long denied. The Margold strategy, as it had become known, was articulated by Nathan Margold, who had argued that the most effective way to beat the Plessy decision, was to simply make it too expensive for states to provide separate but equal accommodations across the board.\(^{466}\) To address those tensions, Spingarn suggested that the NAACP hold a second Amenia conference, duplicating the 1916 conference that had gone so far in formulating the fundamental strategies of the organization. After a great deal of behind-the-scenes haggling, Joel Spingarn was able to convince the NAACP to back the conference, promising to foot the bill for expenses at his estate. Spingarn asked WEB Du Bois to solicit the nation's top black male and female intellectuals to attend, and thirty-three were invited.\(^{467}\)

Du Bois happily accepted this task, and his list included prominent individuals and progressive thinkers, such as Robert R. Moton heir, to Booker T. Washington from Tuskegee Institute, Mordecai Johnson, President of Howard University, Robert

\(^{464}\) Ibid., 66.
\(^{465}\) Ibid., 67
\(^{466}\) Patricia Sullivan, \textit{Lift Every Voice}, 156 -157.
Abbott editor of the *Chicago Defender*, and, of course, Charles Hamilton Houston. 468

The most radical of the thinkers was a young man named Abram Harris, a sociologist from Howard University, who throughout the conference had "tenaciously sustained a crusade for the unity of white and black labor against the capitalist class as the surest means of black uplift."469 Four substantive points emerged from the conference; E. Frank Franklin Frazier advocated the spirit of Black Nationalism, Roy Wilkins advocated for a "Negro bloc," Charles H. Houston advocated for political participation by blacks in all parties, and finally, Emmett E. Dorsey viewed the economic program as a means towards full integration. 470

As the biographer of Joel E. Spingarn explains, "Abram Harris and the immediate conferees had projected a program whose ultimate goal was integration of blacks, through an alliance with white labor, into the larger socioeconomic system..."471 W.E.B. Du Bois would leave the conference frustrated and actually looking towards a type of self-imposed segregation on the part of blacks facing the type of racial oppression prevented in the United States. This tension reflected the growing schism between Du Bois and the leadership of the NAACP which led Du Bois to resign from his association with them in 1934. 472 Led by White, the NAACP continued to focus on segregation and discrimination, while Du Bois and others insisted on voluntary segregation, and the development of economic independence as

468 Ibid., 169.
469 Ibid., 184.
470 Ibid.
471 Ibid., 185.
a necessary prerequisite to freedom.\textsuperscript{473} Although Houston referred to the event as the “anemic conference of Amenia,” the conference did solidify among the conferees the importance of labor and African Americans integration into the labor movement. It also highlighted the range of opinions and intellectual independence of the members within the NAACP, as well as Houston’s prominent position within that community. Houston also enhanced White’s credibility by successfully litigating a series of cases on behalf of, and then in association with the NAACP.

Pressure on the Supreme Court mounted from both domestic and international forces as the 1930’s moved through the Depression at home, and toward war in Europe. Prior to World War II, the justices observed with increasing skepticism the rise of fascism, with its pseudo-scientific explanations of race, however, it was the efforts of black lawyers at home that compelled the court to re-think its positions on segregation.\textsuperscript{474} Whether it was Houston’s win in the white primary case involving Texas in \textit{Nixon v. Herndon} (1927), or the dramatic victory in \textit{Powell v. Alabama} (1932), the court was forced to confront the issue of segregation and existing law. Before resigning his post as the Dean of Howard Law School, Houston accepted another criminal case after it had climbed its way to the Supreme Court, ultimately resulting in the dismantling of another remnant of \textit{Plessy}.\textsuperscript{475}

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\textsuperscript{473} Ibid.  \\
\textsuperscript{474} Peter Charles Hoffer, William James Hull Hoffer, & N.E.H. Hull, \textit{The Supreme Court: An Essential History} (Lawrence, Kansas: University Press of Kansas, 2007), 327.  \\
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In a field off a main road, Alta McCullim, a white Bristow schoolgirl, claimed to have been raped by Jesse Hollins, a local black tenant farmer, three times within three hours. Hollins was arrested on December 28th, 1931 near Slick, Oklahoma and taken to Sapulpa, the county seat of Creek county. There, in a special evening session he was taken from his cell and condemned by Judge Gaylord F. Wilcox to die by electrocution. Reportedly that he was told to either confess, or “he would be turned over to a lynching mob.” Under obvious duress, and with no lawyer or jury, Hollins confessed, and was summarily convicted and sentenced to die.

With the date of execution set for eight months later, there was no time to spare. The International Labor Defense undertook the representation of Jess Hollins, but as Roscoe Dunjee, the head of the Oklahoma NAACP wrote in *The Crisis*, the ILD had been slow in its defense of Hollins, and according to Dunjee missed critical evidence that could have saved Hollins from the electric chair. Dunjee was incredulous that the Communists had failed to discover that authorities from Creek County failed to file the trial transcripts appropriately, as required by law in a death penalty case. A well-known judge looked into the matter, and secured a stay of execution, ordering a retrial, and when the Communists failed to defend Hollins, the

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476 "United States Supreme Court To Hear Second ‘Scottsboro Case,’ *Atlanta Daily World*, April 16, 1935, 1.
478 "United States Supreme Court To Hear Second ‘Scottsboro Case,’ *Atlanta Daily World*, April 16, 1935, 1.
479 Ibid.
NAACP finally stepped in to represent him. Under competent representation, the facts began to cast critical doubt on Hollins' guilt.

The re-trial was not without its share of continued sparring between the ILD and the NAACP. Apparently the ILD had left Hollins's stranded in Brunswick, Missouri, while fundraising for the trial, with no intention of transporting her to her husband's re-trial. This led to a tersely-worded letter from the NAACP to William Z. Foster, the head of the Communist Party and presidential candidate, demanding her presence as a critical element of her husband's defense. The letter had its intended effect, and ILD attorney Joseph Brodskey "was instructed to return Mrs. Hollins to testify at her husband's trial."\(^{480}\) National support began to mount as the NAACP's team in Oklahoma exposed the farcical nature of justice in that part of the country. Even prisoners, Roscoe Dunjee said, were sending their pennies to help Hollins' cause.\(^{481}\) As Jess Hollins' accuser was cross examined by competent counsel, the veracity of the rape charge began to diminish.

The Atlanta Daily World reported that McCullim testified under oath to being "criminally attacked against her will three times in the space of three hours in the field alongside a public road, with the house of a white farmer within sight and within sound of her scream, if she had chosen to scream."\(^{482}\) Jesse Hollins, for his part, had always maintained that the sex was consensual, and in his defense, newspapers like The Atlanta Daily World noted that Alta McCullim did not go to the house for help,

\(^{480}\) "Hollins Granted Re-Trial," Pittsburgh Courier, October 22, 1932, A3.
\(^{482}\) "United States Supreme Court To Hear Second 'Scottsboro Case,' Atlanta Daily World, April 16, 1935, 1.
but walked with Jesse to the road, and did not speak of it to anyone, "until she
happened to meet her relations on the road and they questioned her about her long
absence."\textsuperscript{483} It was also alleged under testimony for the defense that McCullim was
"on familiar terms with Negroes, had gone to their dance halls for amusement, had
made a practice of drinking with them, and enjoyed a reputation as a "good time girl
in the neighborhood."\textsuperscript{484} The defense also scored a key victory when "Sam
Cunningham, assistant county attorney of Creek County, asked the judge Mark L.
Bozarth to dismiss the information which the day before Cunningham had declared he
had the right to amend."\textsuperscript{485} The case appeared to be unraveling for the prosecution,
but there remained the worrisome reality of an all white-jury.

Jesse Hollins was ultimately convicted by that all white-jury, and his case,
which was being referred to as the "Scottsboro of Oklahoma," was appealed to the
Supreme Court. The national office of the NAACP called on Houston to argue the
case. A tremendous excitement surrounded the case, and after the Scottsboro victory
and the Texas white primary case there seemed to be a receptive front on the part of
the Supreme Court. But, as reported in \textit{The Atlanta Daily World}, the case was
fundamentally imperative because it was "an important attack on a system of the
South as it operates against Negroes."\textsuperscript{486} It also signaled a rising consciousness
within black America that the courts were becoming key in the efforts to end
discrimination. A case in point involved Angelo Herndon, a Communist organizer

\textsuperscript{483} Ibid.
\textsuperscript{484} Ibid.
\textsuperscript{485} "Defense Scores In Fight To Free Jess Hollins," \textit{Pittsburgh Courier}, March 18, 1933, 3.
\textsuperscript{486} "United States Supreme Court to Hear Second Scottsboro Case," \textit{Atlanta Daily World}, April 16,
1935, 1.
from the South who was arrested and thrown in jail for his activities, becoming an international cause célèbre. In an article discussing the fact that famed Communist Angelo Herndon had gone free, it was posited that "too often colored people are prone to dismiss the courts when in reality they have not intelligently used the courts." Recognizing the degree to which winning is imperative, the article went on to stipulate that "the race cannot afford to lose cases like that of Brown, Ellington, and Shields, and that of Jess Hollins... nor will they be lost if colored people themselves see to it that the best legal talent is called to the defense."  

Workers, both black and white, understood what could be lost in a rigged jury system, prompting them to gather in Chicago to raise awareness, and money, for the defense of Jesse Hollins, and listen to speeches that discussed the Roosevelt administration’s programs. One particularly fiery speech expressed the frustration of many African Americans when the speaker declared that "Roosevelt's crumbling New Deal was condemned in the same breath with the vicious capitalistic system, which has reduced the black farm laborers to the status of a virtual serf." At the end of the night, workers were determined to be included in the New Deal reforms, and threatened the administration with an uprising should they be denied. By mid-1930 the strain of the Depression was taking its toll on Americans, black and white, as was frustration over the absence of justice. While the NAACP would not advocate an

488 Ibid.
uprising, it was prepared to take on a fundamental aspect of the judicial system; the right to be judged by a jury of one's peers.

In Court

Jesse Hollins's life appeared to be heading toward a gruesome and undeserved end as his head was shaved in preparation for his scheduled electrocution when, with only thirty hours remaining, Charles Houston won a stay of execution from the highest court in the land. With the stay secured, Houston, his father, and Edward P. Lovett attacked the absence of blacks in the Hollins jury as a fundamental denial of due process, additionally arguing that in Oklahoma blacks had never been chosen. When the court granted its writ of certiorari, Houston went to work on the brief that would devastate Oklahoma's claims, asserting that “No Negroes had ever served on a jury in Okmulgee County since Oklahoma became a state in 1907 in spite of the fact that Negroes constituted 17% of the total population of the County and were fully qualified in every respect for jury service. Neither the jury commissioners nor the sheriff had ever called the Negro for jury duty.” Under objective examination of the system, this seemed to be a prima fascia case of jury exclusion, nevertheless, Oklahoma's attorneys offered what they considered to be a plausible reason for the

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491 "United States Supreme Court to Hear Second Scottsboro Case," Atlanta Daily World, April 16, 1935, 1.
exclusion. In part, Oklahoma argued that the races were segregated because it would lead to the embarrassment of blacks to serve with whites on the same juries. This was of course nonsensical, and the justices did not take it seriously. The attorney from Oklahoma, sensing the justices' skepticism, attempted to argue the guilt of Jesse Hollins, but the justices quickly silenced him as that was not the question before the court.  

In front of the justices, Charles Houston, Special Counsel for the NAACP, hammered home the fact that segregation as the official policy could not be tolerated. "This was done, according to Houston, despite the fact that there are many Negroes amply qualified for jury service." In a feeble attempt to gain influence with the justices, the Pittsburgh Courier noted that the Attorney General from Oklahoma attempted to argue that "Houston had not shown any one African American was kept off a jury, but he failed to deny the policy of segregation." As the arguments ended, Houston must have felt a degree of satisfaction, to be with his father, William L. Houston, on the floor of the Supreme Court of the United States, son and father, working to dismantle yet another fixture of the Plessy era.

The justices made quick work of the decision, and reversed the previous judgment. The headline of the Kansas City Plaindealer said it all: "Jess Hollins Escapes Death Penalty in Oklahoma; To Have Re-Trial." The subtitile read "Court Reverses Death Sentence in New Scottsboro Case," and in fact there were similarities

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493 Ibid.
494 "Jess Hollins Escapes Death Penalty In Oklahoma; To Have Re-Trial," Plaindealer (Kansas City, Kansas), May 17, 1935, 1.
between the two cases. Each involved the accusation of rape, competition between the NAACP and the ILD, competent representation, and the exclusion of blacks from juries. Houston even told the Supreme Court during oral arguments that the Oklahoma case involved the same legal points as those raised during the first Alabama Scottsboro case. And, like Scottsboro, Jesse Hollins found himself convicted again in the retrial, even though Hollins's attorney asserted that the only reason Alta McCullim claimed to have been raped was that she had been "found in flagrante dilecto by her brother-in-law." Sentenced to life in prison, though widely believed to be innocent, Jesse Hollins died there in 1950.

As Houston well understood, both cases were about keeping blacks within a defined place, under control in the fields, and segregated from whites. With Hollins v. Oklahoma behind him, Houston's national reputation continued to elevate in the eyes of African Americans, who understood him to be a tireless advocate for those who had no voice. He had shown himself amenable to working across ideological boundaries, objectively analyzing the strategic pluses and minuses. Houston did not leave his analysis to the dustbins of abstract academic discourse; instead he took what worked for others, like the Communists, and incorporated it into a viable strategy. That strategy was put to use as he led mass demonstrations to keep attention focused on the Scottsboro Boys, and argued for political participation at the Amenia Conference. Houston put a pragmatic philosophy into practice, eschewing a strict

496 Ibid.
497 Radlet, "In Spite of Innocence," 137.
498 Ibid.
legalism in favor of a strategy that incorporated labor, the law, and politics. However, most Americans paid little attention to the case involving Jess Hollins, or the evolving strategy that saved him from the death penalty. The case that brought broad national recognition was Charles Houston’s defense of George Crawford.
CHAPTER VIII

RACE, PRESIDENTIAL POWER, AND AGENCY

After connecting the political economy to labor and the government’s long-documented complicity in restricting the movement of blacks Houston expanded his efforts both organizationally, and in the political arena. Houston asserted himself in the legal system between 1934 and 1938, taking the lead some of the most high profile cases in the history of jurisprudence. As he took the helm as the first permanent counsel for the NAACP he used his position to also persuade congress of the work that needed to be done to ensure the inclusion of blacks in the benefits of the New Deal. While Houston’s efforts highlighted the issue of labor, what claimed his attention was the sensational case of a black man accused of murder.

George Crawford was charged with the murder of Mrs. Agnes Boeing Isley, a wealthy socialite, and her maid, Mrs. Nina Budner. The two women had been bludgeoned to death, shocking the small community of Middleburg, Virginia.499 General “Billy” Mitchell, the famed WWI hero, and antagonist in the Blair Mt. labor insurrection, was only too eager to lead a posse (one of many) to hunt down Crawford, that many thought would end in an extrajudicial execution.500 Yet police had been on the case for nearly a year before a tip led them to Massachusetts, and a petty criminal who had served time in prison. George Crawford claimed to have been

500 Geraldine Segal, In Any Fight Some Fall (Rockville, Maryland, Mercury Press, 1975), 47.
far away from the site of the murders, and made for a good witness for the NAACP; he was clean, articulate, and in fact it looked like he was being railroaded, as many in the nation noted. The New York Amsterdam News, for instance, reported that Crawford was not guilty, "but is being sought to be the goat for the real killer."  

Unfortunately, the lawyers the NAACP originally assigned to the case began running into difficulties. When Walter White solicited on Houston, the dean was intrigued by the case's Fourteenth Amendment implications, particularly as it pertained to jury selection. Recognizing the many positives inherent in the case, he accepted White's invitation. It was becoming increasingly clear, however, as Crawford's alibi began to fall apart, that he was indeed present at the scene of the murder. He attempted to rationalize this fact by explaining that he was only there to rob the home, but his partner, Charley Johnson, murdered the women while he was out of the room. This disclosure, however, was long in coming, and Houston had already begun formulating a defense based on the parameters Crawford had initially drawn. He now had to prepare to do what was necessary to protect his client from the death penalty following his dismaying confession.  

That being the case, as Houston moved forward to defend Crawford in Loudoun County, Virginia, he was comfortable with the disposition of the court and its officers, as it appeared race would not be allowed to get in the way of a fair trial.

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504 Ibid.
Optimistically, Houston stated, "we are now convinced that the Commonwealth of Virginia will offer the country an entirely new perspective of southern justice, toward the Negro." He wanted to remind those everyone watching in the United States and around the world that "the case is not so much concerned with the freedom of Crawford, as with insistence that Virginia shall reach out under the Constitution for extradition, and at the same time, flout the Constitution by not providing for services of Negroes on grand and petit juries." Houston argued that seating black jurists was necessary to the attainment of justice, not, as some implied, an unnecessary political nicety.

Houston began spending less and less time behind his desk at Howard as his talents and reputation made him increasingly in demand when there was trouble. Howard students felt that their dean was at times failing to give them or the school their deserved share of his attention, and were becoming vocal about Houston’s continued absence from campus. Nonetheless, when the NAACP asked him to represent George Crawford, Houston would accept, and make use of the particularly gruesome double murder to not only expand interpretation of the Fourteenth Amendment in favor of African Americans, but also to save a black man from being railroaded into a death sentence. Houston’s name would be splashed across the nation’s headlines as he defended Crawford from the death penalty by attacking the practice of segregated juries.

Houston emphasized that the trial was ultimately about African-Americans being allowed to participate in the judicial system as full and equal partners in society. While conduct in the courtroom was cordial enough, there were still some difficulties that had to be confronted. Houston complained that attorneys were not allowed to visit Crawford in jail, and most importantly, despite numerous interviews with qualified African American citizens, none were seated in the jury, so once again a black defendant faced an all-white jury. Despite these issues, Houston ultimately saved Crawford from the death penalty, and he was instead sentenced to life in prison, which was no small accomplishment given the evidence against the self-acknowledged thief. More importantly, with this case Houston began to lay the foundation for the inclusion of African Americans on juries by establishing a court record that could be used in creating precedent. Also significant was the fact that Houston, according to W.E.B. Du Bois, in fact saved the NAACP from an embarrassing loss through his considerable skill and intellect.\footnote{"Official Denies Crawford from Council," \textit{Washington Post}, October 31, 1933, 10, and "Court to Rule on Crawford Defense Today," \textit{Washington Post}, November 7, 1933, 1, and David Levering Lewis, \textit{W.E.B. Du Bois: The Fight For Equality And the American Century, 1919-1963} (New York: Henry Holt and Company, LLC, 2000), 332-335.}

There was criticism of Houston and the NAACP, primarily from the left and the Communists, who accused the organization once again of maintaining its bourgeois attitude and selecting cases based on class and appearance while dismissing the interests of the working poor. This was a fair criticism given that the NAACP did exactly that, and it was up to Houston, to make the best of the case. The Communists used Crawford as the poster child, suggesting that he was just another example of the
NAACP's elitism. There was also considerable praise from the black press for
Houston's efforts however, as well as those of the cadre of lawyers who were
undertaking the representation of African Americans throughout the country. Mary
White Ovington, author, social worker, and treasurer of the NAACP, was quoted as
saying "I am proud that at last we've got a group of brilliant young colored lawyers as
Dr. Charles Houston, William Hastie, and others who are giving themselves to defend
Negroes against injustices."509

Houston took both criticism and compliments in stride, continuing through the
remainder of 1934 and into the spring of 1935 to aggressively attack segregation from
his position as dean and as a member of the NAACP's legal committee. Walter
White of the NAACP continued to consult Houston with increasing frequency
regarding Congressional hearings on a range of issues concerning social security,
lynching, and labor. Houston also crossed over recognized ideological lines, and
defended an attorney from the International Labor Defense. He delivered the annual
keynote address to the NAACP in June of 1934, and the speech was characterized as
the most outspoken on race relations of any at the convention. He then went on to
successfully defend chief counsel Bernard Ades of the ILD, who practiced law in
Baltimore and was threatened with disbarment by the state of Maryland for defending
a black man facing the death penalty. A man not bound by ideology, Houston acted
on his belief that anyone who was willing to expand the cause of freedom was worth

Facing Congress on Race and Labor

A 1935 anti-lynching bill authored by Senator Costigan received a great deal of attention in the national press, in part because it would grant the federal government authority to prosecute individuals involved with a lynching, and also because the bill was linked to labor. H. L. Mencken put the matter squarely before the Committee, referring to the tragic practice of lynching in the United States when he declared that "no government pretending to be civilized can go on condoning such atrocities." With lynching coming under increased international scrutiny, and Democratic majorities in the House and Senate, the time appeared right to strike at the heart of the barbaric practice. Yet there were those who still clung to the old states’ rights arguments, railing about federal interference, and its unconstitutionality.

In his testimony Houston attempted to quell those arguments by letting the committee know that he was not worried about a particularly legal approach. At that moment, he was more concerned with impressing upon them the fact that this argument was made from a moral perspective, and a lynching in the United States would constitute a public emergency, allowing the government to act immediately. He went on to say, "it has been my experience, and I think the experience of many

510 "Houston To Sound Keynote At Annual NAACP Meeting," Pittsburgh Courier, June 2, 1934, A 2.
511 Congress, Senate, Committee on Judiciary, Punishment on the Crime Of Lynching: Hearing before the Senate Judiciary Committee, 74th Cong., 1st session, February 14, 1935, 23.
512 Ibid., 26.
people, that when Congress finds it has a moral responsibility for some great question causing a public emergency, that it usually finds ways and means within which at least to attempt a solution. I refer for illustration to three acts. There is a Mann Act, covering the white slave traffic, on June 25, 1910, when the question of morality, sexual morality, was thought to be a public emergency.\(^{513}\) Houston reminded the committee that historically when law enforcement responded to public emergencies it could be surprisingly imaginative and persistent, pointing to the prosecution of Al Capone, not for any of his more nefarious crimes, but rather for violating the laws of the Internal Revenue Service.

"So I say directly, of course," he continued, "with a mission of our personalities, that the failure of the Congress of the United States to pass an antilynching \([\text{sic]}\) law is itself a reflection that Congress has not felt the sufficient moral responsibility for the crime of lynching and its attendant evils and has not felt that lynching was sufficient public emergency for federal legislation.\(^{514}\) Houston reassured Costigan and the other committee members that there were no constitutional issues, explaining that it was incumbent upon legislatures to create laws that address emergencies, and the courts to interpret those laws. He went on to provide Senator Costigan with a number of examples in which the civil rights of African Americans had been violated, through kidnapping, crossing state lines, and lynching, with no support from the Attorney General of the United States.\(^{515}\) As

\(^{513}\) Ibid.
\(^{514}\) Ibid.
\(^{515}\) Ibid., 27.
persuasive as Houston and the many witnesses were, the bill languished in the Senate, due largely to southern intransigence.

In what was becoming a common occurrence, Houston appeared later that same month of February, 1934, in front of the House Committee on Labor, on behalf of the NAACP. The issue of "equal labor representation on government codes and boards" provided him with the opportunity to inform and instruct Congress with cogent arguments regarding the current status of African American labor, and what was needed to address the situation. He asked "That your committee would report back to the House and in so far as possible, incorporate in the bill a declaration of policy to the effect that the interests of all labor is one; the economic interests of all labor is one; meaning by that this, that if you have a group of labor which is substandard labor, if you have a group of labor which is depressed below the general labor level, the inevitable consequence is to drag down the general labor level." 516 Houston was conscious in applying his strategy for equality to purposefully help the congressman understand that this was not to help African Americans in particular, but rather labor as a whole. This would end the finger pointing by those who were inclined to make an issue of any perceived “special treatment” due to race. It also spoke to his resolute position that progress could only come from absolute equality, and that equality in the workplace was essential to advancement.

“The second position is this: that where you are providing for the number of representatives of national trade unions on your boards, commissions, and agencies,

that there be a provision in there to the effect that national trade unions will not make any discrimination;...I grant you protect it here in one sense by saying that the president shall have the authority to select representatives of labor organizations. But what I would like to get in here is a declaration of policy to the effect that the representatives of national trade shall be national trade unions, shall be national trade unions which made no discrimination in the matter of membership as to race, creed, or color." He cleared the way for further discussion surrounding the real and pervasive circumstances of union discrimination, and the ability of Franklin Delano Roosevelt through his appointments, to circumvent those offending unions.

The third suggestion Houston offered directly addressed the issue of non-unionized labor that prevented many African Americans from securing economic liberty. “From the setup of the bill, it is apparent that organized labor is what you are protecting, as you first start out by saying that the representatives shall be representatives of national trade unions. Then, later on, you say that where in any case, the representatives of national trade unions do not adequately represent the interests of the worker, the President is authorized to select representatives of labor organizations which are not national in scope. But they are still labor organizations.” The socio-economic realities made this request particularly poignant, since it was always those on the bottom rungs of the working class ladder who were left voiceless. Exactly what was to be done with the vast number of laborers left outside the protection of unions was deeply divisive within the union

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517 Ibid., 202.
518 Ibid.
movement. Samuel L. Gompers, the one-time head of the Cigar Manufacturers Union, and first leader of the AFL abandoned non-skilled labor categorizing them as the "unorganizable." For his part, Houston was attempting to move congress to address politically, what unions were not willing, or unable to do on the ground.

Within months of Houston’s testimony on Capitol Hill that very philosophy led to the split between the AFL and the CIO that would last the better part of two decades.

Houston drove home the issue of unorganized labor, illuminating the breadth of the problem; “So far as we are concerned, this is particularly important because over 3,500,000 of the 5,500,000 Negro workers are in occupations which are notoriously unorganized; that is in agriculture and domestic service.” Houston further clarified the nuanced relationship between labor organizations and race, adding that, “In addition to that, Negroes in industry which are partly organized are very often in the unorganized branches of those industries, and go unprotected. For example, in the cotton textile industry, the code which was first promulgated provided, as I understand, that outside crews and cleaners should be exempted from the hours and also the minimum wage benefits code. Ten thousand out of the 13,000 Negroes in the industry came under the classification of outside crews and cleaners.”

Houston expected that African Americans should, along with unorganized whites, be given a seat at the table.

Congressman Richard Joseph Welch of California, in a doubtful query, asked of Houston why blacks were reluctant to join unions when many would admit them.

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519 Ibid.
520 Ibid., 204.
Houston, ever the professor, took the opportunity to enlighten the committee, explaining that as a matter of history "Negroes were taught that the poor white was his worst enemy, to be suspicious of him. Today we teach, or at least most of us teach, that this whole proposition is going to be solved through labor, and that is between looking to the employer and looking to labor, I personally would rather trust white labor than white employers, and there are a lot of Negroes who are feeling that way." To explain black labor's reluctance to join unions, Houston used historical examples, pointing out that the East St. Louis riots [July, 1917], and the Chicago riots of 1919, both involving stockyards, were sparked by whites concerned with blacks who were brought in by owners to break strikes. Historically African Americans entered industries by and large as strikebreakers. Houston continued, "it seems to me you get some of the suspicion which enters into a Negro's mind when white labor comes in and says 'all right, now we will take you.' He asks himself why this sudden benevolence on the part of white labor?"

In defining the problem, Houston intimated that white labor needed to convince blacks that it was sincere in its offer union membership. Mr. Mathew Dunn from Pennsylvania asked Houston if he thought the enactment of the Connery Bill which in part called for a thirty hour work week, would help. "Yes;" Houston responded, "because some Negro workers are in organized labor. And let me make it more definite, that I think that anything that benefits labor in general is going to

521 Ibid., 217.
522 Ibid.
benefit Negro labor in particular.\footnote{Ibid.} Houston attempted to educate the congressman regarding the tremendous problems associated with unorganized labor, declaring "unorganized labor is going to drag down organized labor as long as unorganized does not receive its fair share of wages and also protection in hours and other working conditions."\footnote{Ibid.} He did his best to persuade the congressmen of the need to include representation from non-unionized workers particularly in agriculture, and domestic service, yet the congressmen were reluctant to move beyond the inclusion of organized labor.

Congressman Reuben Wood of Missouri claimed that in the deep South there were plenty of opportunities for interracial unionism. As the exchange between the two reveals, the congressman was willing to be swayed by the anecdotal until Houston patiently laid bare the facts. Referring to the deep South and unionism, Congressman Wood made his point clear: "I am speaking of Mississippi and Alabama. That is the deep South. The molders, sugar makers, mine workers, and a score of other organizations...They do not only take colored workers in their unions, but allow them to hold official positions."\footnote{Ibid.} Houston, on the merits of the congressman's statement, agreed with the facts, but did not leave such a facile treatment of the condition of labor unchallenged.

Houston went on to instruct the committee as to why appearances often deviated from reality. He explained that unions refused to accept black members as
equal partners, so while they technically had an open policy, they were not compelled to adhere to it. Agreeing with Houston's observations, Congressman George Schneider from Wisconsin disclosed to those in attendance, "I know many of my own organization, and I represented it here- the membership of all organizations just would not take the colored worker in their own local union." Congressman Schneider went on to say that white workers "threatened to take the charter down." For Representative Schneider, the issue could only be resolved as "matter of education."\(^{526}\)

Houston agreed with the congressman, and added, "May I tell you a story that I think illustrates the point? It seems to me that you have hit upon the nail in this, that it is necessary for economic exploitation of labor for the employers always to have a labor pool into which they can reach down and draw anytime labor gets out of hand or threatens to get out of hand. The important, the significant position of Negro labor in the South economically is that it represents the unorganized labor pool. Not only does it represent it in the South, but also for the country. There has been too much sectionalized thinking about labor in this country. We have not seen the relation between what happens in the South as affecting what happens in the North. Any time northern industry has trouble with its labor, as in the steel industry around Pittsburgh, it just reaches down into this unorganized labor pool, and in order to keep this reserve unorganized labor pool industry has resorted to all of these dodges about social

\(^{526}\) Ibid., 219-220.
questions, social equality, and what not.\textsuperscript{527} Houston clearly articulating the labor/ownership game as it had been played in the United States.

He continued to make his argument regarding the use of race in dividing labor, recounting a story from a miners' meeting out of Birmingham. "A white worker who recently joined said that he had grown up under this tradition, but that he had seen the light. This was his story:

He said that the boss got a Negro worker and a barrel. He puts this Negro worker in the barrel, took a lid, put the lid on, called the white worker over, and said, 'come here, sit on the barrel, and hold it tight, and don't let that Negro escape, because if he does, the first thing he will want to do, he will want to come around to your house and eat dinner with you; next thing he will want to do is marry your daughter.' The white worker got down and held the barrel as tight as he could. The boss stood back and said, 'Now, I have both those fools where I want them.' That is a crude worker's visualization of this fundamental picture: that you cannot have economic recovery in the South until labor recognizes the unity of its economic interests.\textsuperscript{528} Houston was unable to convince the committee as to the inclusion of unorganized labor, however, his delivery, patience, and prescience regarding what labor needed to overcome and accomplish in order to move the interests of workers forward would foster future invitations to Congress.

\textsuperscript{527} Ibid., 220.
\textsuperscript{528} Ibid.
It was becoming clear that not only were the NAACP, Howard University, and the ILD tapping into Houston's energies, but the administration of Franklin Roosevelt was laying claim to his time with increasing frequency. During the thirties Charles Houston, along with Mary MacLeod Bethune and others, had been working to ban lynching, (following up on decades of work done by others), and a viable political answer to that most horrific of atrocities had yet to pass through Congress. The issue had become summarily entangled with FDR's programs addressing the Depression, as the Costigan-Wagner Act, an anti-lynching bill, attempted to move through the Senate. The bill would have put teeth in legislation which allowed for federal enforcement, and required state law enforcement to take action against lynching. The strategy, long enforced by southern Democrats, was to use the filibuster, thereby holding up programs extended from the National Recovery Act of 1933, such as Social Security, and transportation, during the same session.\footnote{"Senate Still in Deadlock, Sees Big Job Ahead," \textit{Chicago Daily Tribune}, 29 April, 1935, 7.}

The strategy of southern senators was almost counterintuitive; led by Alabama Senator Hugo Black, the anti-lynching bill was framed as an anti-labor bill. Southern senators had a long history of anti-unionism, standing pat against the right to organize, but in the spring of 1935, they faced serious legislation that would allow workers that prerogative, under what would be known as the Wagner Act. That bill would not pass until July 1935 however, so that spring seemed to present a fortuitous
opportunity for the opponents of labor and blacks to kill two birds with one stone. Senator Black claimed the bill was actually anti-labor, arguing "this bill would subject every sheriff in the country to a possible penalty of 25 years in prison if he failed to exercise his duty according to the way the coal operators thought it should be exercised."

In a twisted sense of logic, the senator was referring to a segment of the bill that defined the size of a mob, and the obligation of authorities to control that mob, preventing them from engaging in a lynching. Black seized upon the language, insisting that laborers who wanted to organize could be punished under the vague language of the act. The bill of course had nothing to do with anti-labor posturing, but it clearly articulated state and federal responsibilities in response to the heinous act of lynching. The Chicago Tribune went on to clarify its own opinion, printing an editorial suggesting that this was really an attempt "to embarrass Senators Costigan [Democrat of California] and Wagner [Democrat, New York], both professed labor champions." During the Senate hearings Charles Houston was closely involved, providing testimony.

Heading into the November elections in 1934, Houston put pressure on the Roosevelt administration to employ African Americans in various federal jobs, including positions within the Tennessee Valley Authority. The administration had come to recognize Houston as a valuable resource for race and labor relations issues,

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and requested that he look into the circumstance of African Americans in different departments within the government. A letter from Aubrey Williams of the Federal Emergency Relief Administration was forwarded to all administrators within that department, introducing Charles Hamilton Houston as the Dean of Howard University Law School, and instructing administrators to extend to him every courtesy. In another instance, he received additional support from Clark Foreman, Special Counsel to the Secretary of Interior, Harold Ickes, that the Secretary would appreciate any aid given to Houston or White in their investigations. Houston's investigations into acts of discrimination within the administration, and on federal job sites, were invaluable, and led directly to the employment of African Americans in greater numbers. Although the increase in hiring was not evident across the board, it is significant that larger numbers within the Roosevelt administration were willing to listen to African Americans, and on occasion act on their behalves, albeit tentatively.

Moreover, it was increasingly clear, as the landslide congressional victory of 1934 indicated, that the tide was changing for those who labored. With the new Congress in 1935, the Roosevelt administration would face rising expectations from

532 From Aubrey Williams to Charles Houston, "from the office of the Sec. of the Interior, Clark Foreman Special Counsel to the Secretary to Charles Houston," Personal Correspondence Houston, Charles, NAACP Papers, October 1934-1938 (Frederick, Maryland: University Publications of America).

533 Wilson, Francille Russan. The Segregated Scholars: Black Social Scientists and the Creation of Black Labor Studies, 1890-1950 (Charlottesville and London: University of Virginia Press, 2006), 247. In negotiations the federal government agreed that there should be a fixed number of black skilled workers on federal jobs. William Hastie and Charles Houston would later use these statistics in arguing job discrimination cases in the future.

African Americans. A glimpse of the expectant and barely-contained glee can be seen in the *Pittsburgh Courier* headline “The Landslide and the Negro,” which declared that “the Republican Party Is Done For.” This jubilant pronouncement was due to the 69 Senate seats and the 322 seats in the House that were newly controlled by the Democratic Party. The elevated expectations resonated with the public, as the editorial went on to account for the fact that the AFL, led by Matthew Wall, raised over $250,000 to fight for the rights of laborers being oppressed by fascists.\(^{535}\) Wall, however, was attacked for the AFL.'s reactionary record with regard to race, and answers were demanded by the editorial staff of the *Pittsburgh Courier*, which asked "And now Mr. Wall how about the barbarous racial persecution of Negroes right here at home, where over 3,500 have been hanging and burned by mobs since 1882; where they suffer restrictions and persecutions as savage as any experienced by Jews and radicals anywhere in Europe."\(^{536}\) Indeed, the rise of fascism in Europe had sensitized many Americans to the experiences of oppressed African Americans at home, impacting the disposition of the Supreme Court and America's largest union, the American Federation of Labor, which, with the passage of the Wagner Act, faced its own internal struggle surrounding issues of organization and race.

The AFL, CIO, and Race

Heading into 1935, Houston and other leaders, both in and out of the NAACP,

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\(^{535}\) "The Landslide and the Negro," *Pittsburgh Courier*, November 17, 1934, 10.

\(^{536}\) Ibid.
most notably Abram Harris, became interested in the recent developments taking place within the American Federation of Labor and its upstart the Congress of Industrial Organizations. With the long history of racial tensions within the union movement clearly documented, the position of leaders like Houston and Abram Harris, prominent spokesmen from the second Amenia Conference, were needed voices encouraging African Americans to join the union movement. Their voices were joined by the NAACP's fresh willingness to promote the interests of workers made for intriguing possibilities concerning the role of individuals and organizations in moving the interests of all workers together. While some unions excluded blacks from their membership rolls, or only allowed them work that whites were reluctant to accept, the United Mine Workers Association was one of the few open to the inclusion of African Americans. Thus it was with heightened expectations after the passage of the Wagner Act, that many leaders within the African American community watched the developments within the house of labor.

A brief examination of the tensions that existed between the American Federation of Labor and the United Mine Workers Association over issues of organization and race will shed light on the place of race within the union movement. After John L. Lewis's election as head of the United Mine Workers Association, it was apparent that his leadership was driven by a practical utilitarianism that matched his conservative nature. As a representative of the largest union in the AFL, he enjoyed a lucrative salary and a position of power on the counsel. He used aggressive

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and even physical attacks to make a point, yet by the end of his career, he was referred to as a statesman in the labor movement. Always independent, he went so far as to challenge Gompers for his post, and was defeated in 1921 due to the senior’s superior organizing. 538 During the mid twenties when the union was at its lowest, Lewis supported Hoover, contrary to the AFL position, but by 1932 he was ready for a change in politics, both nationally, and within the AFL.

Unlike the American Federation of Labor’s longstanding resistance to state social programs, Lewis advocated a laundry list of remedies that would ultimately lead him to sever his ties to the organization. Among of the prominent demands were unemployment insurance, federal involvement in the coal industry, federal price controls, worker involvement in the management of companies, and greater representation of industrial workers. 539 This was obviously a significant departure from the core of the AFL’s agenda, and would eventually serve as the foundation of his CIO. With the election of Franklin Delano Roosevelt in 1932, and the tremendously beneficial enactment of the National Industry Recovery Act (NIRA), there existed the right mixture of governmental support and worker activism to move toward a more inclusive union.

In the summer of 1934, following long arguments about jurisdictional obstructions, the leaders of the AFL agreed to a compromise that would permit the return the control of jurisdiction to the crafts, while allowing for the inclusion of

539 Ibid., 178-179
industrial workers, in a significant victory for Lewis. The convention of 1935, and the now infamous punch thrown by Lewis striking the jaw of William Hutcheson, head of the carpenters union, finalized his separation from the “old guard” in the AFL. Lewis’s punch, thrown on the podium of the convention, represented the metaphorical as well as physical separation of the two unions. Within days Lewis was meeting to form the Congress of International Organizations inside the AFL, with the intention of organizing industrial workers with or without their consent. The confrontation became personal between Lewis and William Green, his onetime protégé, and the antagonism between the two men, coupled with their diametrically opposed goals, ultimately tore the union apart.

There was no sitting idly by for African Americans during this time, as they had unprecedented representation on both the right and the left. Concerning labor, the National Urban League has been on the right, while the National Negro Congress fell on the left, but as August Meier and Elliott Rudwick explain in their work, Black Detroit and the Rise of the UAW, the depression changed the NAACP's approach to labor, and it began actively working to improve the economic conditions of African Americans of all occupations and classes. This pressure came from all across the political spectrum, including "socialists like A. Philip Randolph, a pioneer black labor leader, and Howard University economics professor Abram L. Harris, who for years had considered the NAACP approach too narrow; the newly invigorated Communist Party, who denounced middle-class "misleaders" of the Negro people like Walter

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540 Ibid., 217-220.
White; and most important, a group of younger black intellectuals such as Professor Ralph Bunch of Howard's political science department, and Dean Charles H. Houston of its law school—individuals who were impatient with the gradualism of their elders and deeply influenced by the leftward trend widespread among American intellectuals during the depression.  

The NAACP, responding to this pressure from inside and outside of the organization, formed a committee to determine the appropriate response to African American labor grievances, appointing Abram Harris as its head. As a result, in 1935, the NAACP approved Harris' report which called for black and white workers to work together in light of their common labor interests. The impact of the report appeared to have the desired effect, as during that same troubled year the AFL agreed to hold hearings at which Charles Houston himself provided testimony concerning the AFL's racist policies that belied their interracial rhetoric. Whether to organize the crafts, industrial, or service labor, together, separately, or not at all, tore at the foundation of the house of labor leading to a parting of the ways for the AFL and the CIO. However, African Americans would continue to press the issue of interracial unionism in the forefront of the organizational debate seeking a truly egalitarian workplace.

By November of 1936, the Congress of Industrial Organizations was a separate entity with John L. Lewis and the UMWA leading the way toward

542 Ibid.
543 Ibid., 24.
unionizing mass production workers. The steel industry was their first target. Plans took an unexpected turn when the General Motors workers in Flint initiated a strike in December of 1937, exhibiting the kind of militant action Lewis admired. That strike at the foundry of the United Auto Workers was successful, and led directly to talks with Lewis and the head of the steel industry, culminating in the unionization of U.S. Steel, followed by Ford. As the CIO grew, its membership became unwieldy, and Lewis became frustrated by complications from international affairs and domestic policy.

Roosevelt’s policy toward the war in Europe, and his favoritism toward business during that time led John L. Lewis to support the nomination of Wendell Wilkie. For all of the force of Lewis’s personality and years at the head of powerful unions, the CIO was in an uproar over Lewis’s support of Wilkie, and his declaration that he would step down as CIO president if Roosevelt won. Roosevelt did win, and to his credit, Lewis delivered a gracious speech at the convention as he resigned as head of the CIO to devote his time to the UMWA.\(^{544}\) Philip Murray, as the new head of the CIO, witnessed the spread of industrial unionism bringing millions of workers under the umbrella of union organization. He endorsed state programs designed to assist workers of all races and political persuasions, even though he had suppressed the left wing of the union. Charles Houston, long an advocate of working with labor, found the NAACP’s legitimacy questionable if it failed to side with the CIO. He told Walter White that there needed to be more “irons in the fire,” and that “there should

\(^{544}\) Ibid., 367.
be a three ringed fight at all times.”

According to Robert Zieger’s *The CIO 1935-1955*, “The CIO stands at the center of the history of twentieth-century America.” Although equally important to the gains made by labor were the elections of 1936, which installed Democrats in powerful positions at the federal and state levels. Between 1936 and 1938 their agenda included such goals as chartering new members, stabilizing contractual negotiations, and ensuring that workers observed their contracts. It was essentially a non-radical movement, concerned with securing gains within the existing system, and the issue of race would remain be a contentious one.

**Houston, the NAACP, and Labor**

1935 brought the dissolution of the house of labor, as the AFL lost membership to the CIO. That same year Charles Hamilton Houston formally joined forces with the NAACP, an organization with which he had become increasingly involved. There had long been a growing tension between his duties as Dean of Howard University’s law school and the increasing pull from the NAACP to litigate on its behalf. Unable to justify the duality any longer, in early July 1935 he resigned from Howard and boarded a train for New York City where he opened an office and began work as the NAACP’s chief legal counsel. Several scholarly works discuss

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545 Patricia Sullivan, *Lift Every Voice*, 220.
547 Ibid., 70-73.
Houston's tremendous accomplishments in litigating school desegregation cases during these years. This work will touch on those cases, but more closely examine connections between those cases and labor, because to Houston these realms were inseparable; both constituted basic and fundamental steps toward the fulfillment of one's humanity.

Once in New York, Houston immediately began to organize his office in Harlem. The first challenge was to prioritize the NAACP's legal strategy, for numerous cases were already on its agenda. On July 12th, Houston was busy querying the administration on its record regarding the hiring of African Americans. In a letter to Francis Stradford, an attorney from Chicago, he discussed his desire to meet with the Attorney General of the United States about hiring more African Americans. He wanted to "press upon him the necessity of recognizing the legitimate aspirations of Negroes for Judiciary service in the federal system." Part of his strategy was to place a cadre of black lawyers within the government, the members of which would take the initiative in handling cases concerning civil rights.

On the same day, to press the point, he fired off a response to the Associated Negro Press regarding the meeting of the National Bar Association and the National Organization of Negro Lawyers in Nashville, Tennessee. This would be the first time

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549 CHH to Francis Stradford, July 12, 1935, Personal Correspondence of Charles Hamilton Houston, October 1933-1938, NAACP Papers (Frederick, Maryland: University Publications of America, 1982).
a meeting of black NAACP lawyers would take place in the South, and Houston felt it necessary to impress upon them that "it is important that the white South realized Negroes have a group of courageous, training, honest, professional defenders." He wanted to put the word out, so that people in the South understood that there were highly qualified lawyers meeting to discuss the interests of African Americans. In his not-so-subtle way he also asked the association to give them any mention that they could in their papers.

Hitting the ground running as he did, early in July he was already confronted with the issue of Texas primaries. The 1932 case of *Nixon v. Condon*, although a victory, had been skirted by the state of Texas through acts of subterfuge. Nonetheless, the right to vote was important and needed to be addressed, which is what caused Houston so much angst as he pondered a way in which to make change meaningful in that state. To Houston, voting rights were at the heart of the working person's existence. In essence, elections provided the means by which local communities and individuals regulated the quality of their lives, and to be denied access to that power was to be denied access to that which protected the gains that represented a life's toil. Houston wanted to revisit the issue of Texas primaries, but he wanted to make sure that this time there was no way for Texas to elude its responsibility and deny blacks equal access to the vote.  

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550 CHH to Claude A. Barnett, 12 July 1935, Association of Negro Press, Personal Correspondence of Charles Hamilton Houston, October 1933-1938, NAACP Papers (Frederick, Maryland: University Publications of America, 1982).

551 CHH to Lionel Murphy, July 4, 1935, NAACP files, Personal Correspondence of Charles Hamilton Houston, October 1933-1938, NAACP Papers (Frederick, Maryland: University Publications of America, 1982).
While planning once again how to most effectively address the issue of all-white primaries in Texas, Houston planned a trip through the South with his onetime student and now part-time colleague, Thurgood Marshall. Their mission was to wind their way through North Carolina, Alabama, Tennessee, and Missouri, then travel back through Illinois, documenting the conditions of segregated schooling in those states. To record the trip they took along a film camera, and in addition to documenting the deplorable condition of segregated schooling in those states, they also captured African American laborers working in everything from cotton, to tobacco, and followed them back home to their front porches. The aim of the trip was to establish irrefutable evidence that states were disregarding the mandate of Plessy v. Ferguson, which ordered states to materially provide for separate but equal. Houston intended to flesh-out the skeletal plans that Nathan Margold had conceived of in his 1930 report. In 1935 two black men driving through the South, documenting the ills of segregation was a perilous undertaking. Fortunately though, the trip went well and yielded rare footage that documented the plight of those confronting segregation.

In mid-August Houston received very good news regarding the National Bar Association's results from its meeting in Nashville Tennessee. The National Bar voted “yes” on the resolution to attack the Texas primaries, and were confident that an excellent case could be made using Angelo Herndon, a young labor organizer who

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552 CHH to father, July 18, 1935, Personal Correspondence of Charles Hamilton Houston, October 1933-1938, NAACP Papers (Frederick, Maryland: University Publications of America, 1982).
553 Documentary Footage of Houston's Trip through the South, NAACP files. www.law.cornell.edu/houston/housbio.htm
had been arrested for distributing information on the Communist Party in Georgia and sentenced to some ten to twenty years on a chain gang. Ironically, he was sentenced at the same time the state of Georgia actually decided to include the Communist Party on the voting ballots of the state. In addition to having a case in hand to work with, Houston was elated at the fact that it was the "first time that Negro lawyers have ever stood up as a group and criticized the United States Supreme Court."

With the Herndon case in the planning stages, 1935 was indeed shaping up to be a very busy year for Charles Houston. To add further to his already full plate, he received news that the NAACP was planning to provide representation at the annual meeting of the American Federation of Labor. Houston expressed his uncertainty, explaining "I was unsure as to what the form of their representation would take. There will be some Negro delegates, the most important being A. Philip Randolph, president of the Brotherhood of Sleeping Car Porters." Randolph and Houston, in their communications regarding the American Federation of Labor and its treatment of African Americans within the railroad unions, were of one voice combating formal union discrimination. As 1935 came to a close Houston also became aware of a young black man by the name of Lloyd Gaines, who had applied to the University of Missouri. This would lead to one of Charles Houston's greatest victories in front of

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554 Gerald Home, *Black Liberation/Red Scare: Ben Davis and the Communist Party* (Cranbury, New Jersey: Associated University Press, 1994), 48. Home expertly lays out the hypocrisy of the arrest and the nature of the strained relationship between the NAACP and the Communist Party, the relationship between Ben Davis and Houston's as well as Houston's role in the case.

555 CHH to Mrs. King, August 14, 1935, Personal Correspondence of Charles Hamilton Houston, October 1933-1938, NAACP Papers (Frederick, Maryland: University Publications of America, 1982).

556 CHH to Samuel Horwitz, September 26, 1935, Personal Correspondence of Charles Hamilton Houston, October 1933-1938, NAACP Papers (Frederick, Maryland: University Publications of America, 1982).
the Supreme Court. On his way to *Gaines v. Missouri* (1938), however, he would first log two impressive victories with Thurgood Marshall involving the University of Maryland’s admission policy, and the issue of teacher pay in Montgomery County, Maryland.

The Education Cases

A great deal of legalistic interpretation has been written about Charles Houston’s forays into education law and the significance of these cases as they led to the groundbreaking case of *Brown v. Board of Education* (1954). This work, however, is primarily concerned with Houston’s relationship with labor, and his impact on the law and civil rights from that perspective. Education was recognized as a gateway to careers that were professional, blue collar, and agriculture creating the basis of an egalitarian liberal society as black workers achieved economic independence and in local politics actively shaping society. Given that the law is based on precedent, Houston’s work while in the employ of the NAACP greatly expanded the boundaries of the Fourteenth Amendment’s equal protection clause, influencing his ability to argue labor discrimination. His commanding arguments in front of courts at the state, appellate, and Supreme Court levels helped change the understanding of judges, and ultimately the laws of the nation.

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557 CHH to Edward P. Levitt, October 1935, Personal Correspondence of Charles Hamilton Houston, October 1933-1938, NAACP Papers (Frederick, Maryland: University Publications of America, 1982).
By 1935 the University of Maryland had a long and well established history of rejecting the applications of African American students regardless of their qualifications. Donald Gaines Murray was a recent graduate of Amherst, and the perfect candidate to challenge the University of Maryland's law school admissions policy. From Baltimore himself, Thurgood Marshall had long been eager to take a case that would strike at the heart of Maryland's race-based standards. He had waited patiently for a client that suited Houston, and when Marshall approached Houston with the facts of Murray's case, Houston replied that the NAACP would take it. When Murray agreed to be represented by Houston and Marshall under the auspices of the NAACP, all the pieces were in place.

Charles Houston had agreed to second chair the trial of Murray v. The University of Maryland (1936), but Thurgood Marshall explained "I worked the case out on the ground and I drew the pleadings since there was some intricate old Maryland common law involved, but outside the legal work I did very little. The court presentation was Houston's doing. The fact is, I never was chief counsel in the case that Charlie took part in." During the trial, which began on the June 18, 1935, Houston masterfully manipulated representatives from the state and the University of Maryland on the witness stand. He was able to get them to state for the record that the only reason Donald Murray was excluded was the fact of his race. The judge in this case was facing a fairly simple legal matter, that being the existence of no

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559 Ibid., 68.
separate law school for Murray. It was clear that the preponderance of the evidence weighed in Murray's favor, thus the judge ordered the University of Maryland to admit Donald Gaines Murray into the University's law school.

The case was appealed, and the Maryland Court of Appeals affirmed the lower court's decision, recognizing the powerful 14th Amendment arguments. It is interesting to note that Maryland, sensing that the case would have little chance of success on appeal to the Supreme Court, decided not to challenge the appellate court's decision. Murray v. Maryland then, did not have immediate national impact, but was an auspicious omen of things to come, though Houston was cautious in his optimism. The NAACP was understandably overjoyed, but in an article titled Don't Shout Too Soon, Houston warned against celebrating too early, when there was still so much to be done. The "Law suit means little unless supported by public opinion," he warned "nobody needs to explain to a Negro the difference between the law in books and the law in action. In theory the cases are simple; the state cannot tax the entire population for the exclusive benefit of a single class. The really baffling problem is how to create the proper kind of public opinion. The truth is there are millions of white people who have no real knowledge of the Negroes problems and who never give the Negro serious thought. They take it for granted and spend their time and energy on their own affairs." Houston would take his own advice and press on, in

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561 Ibid.
keeping with his adage, "there's no tea for the weary, no crepe for the dead," as he took aim at unequal pay for teachers.\textsuperscript{562}

Thurgood Marshall had brought the issue of teacher pay, together with a promising case in Maryland, to Charles Houston's attention. His mentor, who Marshall now called "Charlie," instructed him as to how best to go about formulating the case, and agreed to assist as second chair. The documentation involved in the case fell right into their hands and helped direct their strategy, as Houston and Marshall attempted to demonstrate that the practice of unequal teacher pay violated the tenets of \textit{Plessy v. Ferguson}. A state could have separate facilities, but they must be equal, so how could Montgomery County's school board claim equality in employment, when the salaries provided teachers were clearly unequal?\textsuperscript{563} As the facts bore out, the case was the legal equivalent of low hanging fruit. Elementary principal William B. Gibbs protested being paid half of what his white colleagues received. The Board's attorneys attempted to have the motion dismissed, but when the judge agreed to let the case proceed, they read the legal writing on wall and agreed to equalize salaries.\textsuperscript{564}

The NAACP had championed the victory in the \textit{Montgomery County Cases}, and sent congratulatory messages to Houston and Marshall. Unfortunately, Maryland and its Attorney General sensed that they would have failed in appealing the case, so, as in the case of \textit{Murray v. the University of Maryland} (1936), the verdict would only

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  \item \textsuperscript{563} Rawn James Jr., \textit{Root and Branch}, 101-102.
  \item \textsuperscript{564} “Maryland Court Hears Teachers’ Salary Case,” \textit{The Pittsburgh Courier}, 19 June 1937, 12.
\end{itemize}
\end{footnotesize}
have relevance inside the state of Maryland. It was a great victory nevertheless, and was certainly a portent of good things to come in the area of equal pay for African American teachers.\footnote{Ibid., 153.} Marshall and Houston found that the Montgomery case had a domino effect, as they were solicited by teachers from other counties and states to challenge the standard of unequal pay. Taking on these additional cases fit Houston’s understanding of the necessity to continually appeal to the people for support, and attention from the press kept their cause in front of the public.\footnote{There were several cases surrounding the Montgomery case, some of which were reported in, “Courts To Hear of Teachers’ Salary Equalization Fight,” \textit{The Chicago Defender}, December 25, 1937, “Teachers Salary Equalization Issue Results in Spirited, Promising NAACP Meet,” \textit{Atlanta Daily World}, November 24, 1937, 1., and “Unfair Teachers Salaries To Be Fought,” \textit{The New York Amsterdam News}, November 28, 1936, 19.} Houston's efforts at the state and local levels had stunning repercussions for those living in Maryland, but his next case took reversing \textit{Plessy} to the national precipice. It was becoming increasingly clear that institutions of higher learning, the gateways to professional careers that would allow African Americans broader entrée into the body politic, would have to open their doors. A young, articulate Lloyd Gaines would have a large role to play.

**Missouri ex. rel. Gaines v. Canada**

For all of Charles Hamilton Houston's many professional accomplishments, his married life had been a challenge. He had always wanted children, and the one time that he and his wife Gladys thought that parenthood was imminent she
miscarried. As a result of that misfortune her doctor informed her that it would be extremely dangerous for her to ever become pregnant again. Under the strain of a breakneck schedule, the constant absences from one another, and the disappointment of never having that longed-for family, the pair grew increasingly apart. So when Houston moved to New York he and Gladys (Mag) agreed to live separately. While working at his new office, Henrietta Williams, a single woman, and Houston found themselves increasingly attracted to one another. As their love grew, Houston contemplated divorcing Gladys. After considering her options and reflecting on what their lives had become, Gladys consented to a divorce, which Charles secured on October 13, 1937. With his divorce final, Houston soon married Henrietta, causing a stir within the black press. Many of those who knew him wished him well, however, as did Mary McCloud Bethune a longtime ally.

With Houston's private life taking such a dramatic turn it is testament to his powers of concentration that he was able to focus on Lloyd Gaines's case. The state was obligated to provide an equal education, and where that was absent, the opportunity to receive an equal education must be provided by the state. For the state of Missouri this presented something of a problem when it came to educating lawyers. When Gaines applied to the all-black Lincoln University, it did not have a law school, and it was Gaines's contention that lawyers needed to be trained in the laws of their particular state. That being the case, Missouri's offer to provide his education out of state simply would not do. This was exactly the type of case that the

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568 Ibid., 146.
NAACP was looking for; Lloyd Gaines’ rights were being violated under the equal protection clause of the 14th amendment. With his team of lawyers assembled, Houston wrote his father that the case was set to start July 10, 1936.\(^{569}\)

The trial took place in Columbia, Missouri, and arguing the case with Houston were NAACP lawyers Sidney Redmond, and Henry Espy. Having risen at 4:15 AM to prepare for their lengthy ride to the courthouse, they encountered an unexpected 30 mile detour and Houston found himself 15 minutes late. On top of the discomfort of arriving late, those assembled in the courtroom were also facing the stifling 100° heat of the Missouri summer. In a welcomed surprise, the courthouse was completely integrated including the drinking fountains in the bathrooms, and Houston found members of the court to be extremely cordial, as the judge and lawyers agreed to dispense with tradition and hold a "shirtsleeve trial."\(^{570}\)

For Houston the case boiled down to the simple notion that the job of the University of Missouri was to demonstrate that it "had nothing special or unique about it for the special instruction of Missouri law. Our effort was to show that the University of Missouri, made special efforts in Missouri law."\(^{571}\) It was paramount for Houston to demonstrate that Lloyd Gaines was sacrificing in his education by being sent beyond the borders of the state.

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\(^{569}\) To Dad from CHH, NAACP files, June 25, 1936, Personal Correspondence of Charles Hamilton Houston, October 1933-1938, NAACP Papers (Frederick, Maryland: University Publications of America, 1982).

\(^{570}\) Confidential Memo from Houston to Walter White, July 11, 1936, 1-2., Personal Correspondence of Charles Hamilton Houston, October 1933-1938, NAACP Papers (Frederick, Maryland: University Publications of America, 1982).

\(^{571}\) Ibid., 3.
In the sweltering summer heat, the lead attorney for the University of Missouri, William Hogsett, laid out the facts of Missouri law with a dramatic opening statement that according to Houston included "storming around," the entire floor. Houston had been preparing to attack Jim Crow his entire life, arguing successfully in front of the Supreme Court, and any number of cases before lower courts. As Hogsett went through an admittedly impressive opening statement, Houston "began to wonder whether some of the defense lawyers felt that they would get 'us boys' up in their county seat, turn the thunder on us for the first half-hour and get us properly awed. So, when Gaines came down off the witness stand, I decided to demonstrate that two could thunder." It was not long before the judge called the two men together and informed them that they would be restricted to arguing from their seats, and from that point on there was little in the way of thunder.

Houston first questioned the dean of the law school, Mr. Masterson, forcing him to admit that there was indeed an advantage to the University of Missouri's Law School. Afterward he confided to Walter White that the dean "wiggled like an earthworm on this...and was about the sorriest and most pitiable spectacle I have ever seen of a dean of an approved law school." He then turned his attention to the registrar, S. Woodson Canada, and under examination established that the university admitted students that were Chinese, Japanese, and Hindu. As successful as Houston’s cross examinations of the witnesses were, he was already preparing for the

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572 Ibid., 1-2.
573 Ibid.
574 Ibid., 3.
appeal as he continued his questioning of the registrar, emphasizing under questioning that “The only students you ban would be students of African descent,” to which Canada answered “yes.” He thought the case would be decided in their favor in the lower courts, but Houston soundly laid the legal foundations for his appeal as he moved to establish the dearth of able lawyers in Missouri. Buttressing his argument, he questioned Robert Witherspoon, an attorney in St. Louis, as to how many black lawyers entered the bar over the past five years, to which he answered “three, with only forty-five practicing in the entire state.”

Houston’s inclinations were seldom suspect, and the case was decided against his client. In his appeal to the Supreme Court of Missouri, the original decision against Gaines was upheld. This defeat necessitated an appeal to the Supreme Court, and the opportunity to deliver a devastating blow to segregation nationally. The case was granted certiorari, with arguments set for November 9, 1938, by a court that by the late 1930’s had become more moderate, particularly with the additions of Hugo Black, and Stanley Reed. Of the two, Black was clearly more receptive to fundamental arguments related to equal protection and due process, while Reed could be persuaded by the merits of an argument, but was by no means a lock on issues of race. At that time there were eight justices on the court, after the death of Justice

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576 Confidential Memo from Houston to Walter White, Personal Correspondence of Charles Hamilton Houston, October 1934-1938, NAACP Papers (Frederick, Maryland: University Publications of America, 1982), 4.  
577 CHH, *Missouri ex rel. Gaines v. Canada*, 119-131, Box 163-46 Folder 2, Manuscript Division, Moorland-Spingarn Research Center, Howard University, 126.
Cardozo who had not yet been replaced. Houston, as was his custom, prepared for oral arguments by delivering them in front of students and professors at Howard, asking for their critique. Assured that he was ready, Houston waited to argue the case that some considered more important than the Roberts case argued in Massachusetts which involved Sarah Roberts and segregated education. In that case, Sarah Roberts lost, but five years later the Massachusetts General Assembly, in reaction to her case, passed a law making segregation illegal.

Houston’s oral arguments on the unconstitutionality of the University of Missouri’s position were watertight, leading the court to agree with his assessment that the tenants of Plessy v. Ferguson were being violated. Justice Hughes, arguing for the majority and referring to Lloyd Gaines, wrote that “It was as an individual that he was entitled to the equal protection of the laws, and the state was bound to furnish him within its borders facilities for legal education substantially equal to that which the state there afforded for persons of the white race whether or not other Negroes sought the same opportunity.” Though the decision did not end segregated public facilities, it did make the maintenance of separate but equal exponentially more expensive. One commentator in the black press referred to it as “the greatest victory Negroes had won since freedom.” The decision granted solace and validation as it


579 Ibid.


legitimized Houston’s plan for using the courts to build precedent upon precedent, in order to create the legal foundations to mount attacks at the Supreme Court level.\textsuperscript{582}

Even before the Gaines case Houston had begun to contemplate seriously his position as special counsel for the NAACP. It was becoming clearer to him that with his new marriage and Thurgood Marshall’s ability to take his place, he might be of better use outside the constraints of his current role. In a revealing conversation with Marshall earlier in New York City, he was matter of fact about the status of the law in their lives, telling Marshall “You know how much money you’re making. And you know how much money I’m making. And I still say you have more goddamn fun than I do.”\textsuperscript{583} Houston’s desire to leave the NAACP was no secret, and by the spring of 1938 he was openly writing and reassuring those around him that this did not mean that he was severing his ties with the NAACP, but that he would be removed from the payroll.\textsuperscript{584} The end was formalized by a press release from the NAACP simply stating that he was leaving, and by mid-July Houston’s tenure with the group formally and publicly ended.\textsuperscript{585}

Houston planned to reenter the practice of law with his father, and without missing a beat agreed to represent the Organization of Negro Women at the behest of

\textsuperscript{582} John Hope Franklin, and Genna Rae McNeil (editors), \textit{African Americans And The Living Constitution} (Washington: Smithsonian Institution Press, 1995), 48.
\textsuperscript{583} James Jr., \textit{Root and Branch}, 126.
\textsuperscript{584} To Edward Lamb from Houston, May 31, 1938 and To Anita Grant from Houston, June 20, 1938, NAACP Papers. Personal Correspondence of Charles Hamilton Houston, October 1934-1938, NAACP Files (Frederick, Maryland: University Publications of America, 1982).
\textsuperscript{585} “Houston Leaves NAACP New York Office,” July 15, 1938, Personal Correspondence of Charles Hamilton Houston, October 1934-1938, NAACP Papers (Frederick, Maryland: University Publications of America, 1982).
Mary McLeod Bethune.\textsuperscript{586} It was clear that there would be no down time for Houston as he set off on this new phase of his career. He described his sense of who he was at that point in his life, when he told his father “I have had the feeling all along that I am much more of an outside man; that I usually break down under too much routine. Certainly for the present, I will grow much faster and be of much more service if I keep free to hit and fight whenever circumstances call for action.”\textsuperscript{587}

This view of himself is interesting and has been addressed by other writers, who take the position that he was an “outside man,” but to take Houston at his word overlooks the much larger picture. While it is true that he referred to himself in that manner, Houston always believed the answers to America’s issues surrounding race could best be addressed by maintaining an inside strategy. It is clear that he is referencing organizational affiliations, but in fact the larger point to be made is that he represents the ultimate “inside man.” It was his unwavering belief in the judicial system and the Constitution itself that gave him the confidence and wisdom toward not aligning himself with either separatist or accommodationist movements. It is why, for example, he was never swayed by Garvey, or the Communists, or Du Bois as he pulled away from the NAACP, and it is why he doggedly rebuffed those who criticized the legal route as too slow and ineffective.

The cleavage between the approaches of Booker T. Washington, and W.E.B. DuBois, in the twentieth century is severe and obvious, with Houston providing a

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\item To Charles Houston from Mary McLeod Bethune, Personal Correspondence of Charles Hamilton Houston, October 1934-1938, NAACP Papers (Frederick, Maryland: University Publications of America, 1982).
\item To Dad from CH (Your son), Personal Correspondence of Charles Hamilton Houston, October 1934-1938, NAACP Papers (Frederick, Maryland: University Publications of America, 1982).
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middle way toward equality that more successfully navigated the peculiarities of race in American society. He not only demanded that the nation make real the rhetoric of democracy, but offered a path unlike Washington or DuBois. Nowhere was the separation between these men more visible than the arena of work. For Booker T. Washington workers were to toil within the vicissitudes of racial injustice with an acquiescence that belied the natural desires of humanity. Forgoing unionism, he encouraged black workers to be willing to take employment on employers’ terms. His 1895 speech at the cotton expo became axiomatic for the Tuskegee way.

DuBois on the other hand had his own issues with labor. While he rejected out of hand the accommodationist philosophy of Booker T. Washington he also decried the racism inherent in the union movement. It is true that he was drawn to Marxism but he belittled the Communist Party of the United States for its inability, or refusal to acknowledge that race in the United States would preclude any class alignment. Instead he explained that “Colored labor has no common ground with white labor.” This American exceptionalism would result in nothing more than the perpetuation of separate classes declaring that “No [American] Soviet technocrats would do more than exploit colored labor in order to raise the status of whites.” For DuBois, unable to fathom change in America concluded that he would rather leave the United States than continually meet with such predictable frustration.

589 Ibid., 310.
To Charles Hamilton Houston, real freedom and true equality would be achieved from inside the system challenging in prescribed fashion what Booker T. Washington would not, and W.E.B. DuBois could not. Houston’s ability to understand and use the legal system, combined with acute political acumen, provided the type of political efficacy that eluded the other men. His willingness to accept help from the Communists when it served the larger purpose, and a categorical unwillingness to accept the existence of inequality, nurtured Houston’s pragmatic approach that chipped away at the vicissitudes of racism. He also understood, and insisted on the inclusion of labor in his assessment of tackling workplace discrimination, even though it demanded a long and determined fight. Houston never wearied from any fight resting instead firmly on the conviction that his vision of change would eventually lead to a more meritocratic and egalitarian nation. It was with this vision that Charles Houston prepared for the next phase of his life.

Shortly before heading back to Washington D.C. he wrote his father in a somewhat lamenting tone that he was returning home not much better off than he had been when he left, thoughtfully stating “But I would not give anything for the experience I had.” There was a brief moment when he thought that he may have been asked to resume the role of Dean of Howard’s Law School due to some trouble at that position, but it was resolved without his being pulled back in. Explaining his relief to his father, Charles said “Somehow I feel cleaner today that I was not called

590 To Dad from Your Son, Personal Correspondence of Charles Hamilton Houston, October 1934-1938, NAACP Papers (Frederick, Maryland: University Publications of America, 1982).
on to plunge into the feted atmosphere on the hill. We shall see what the future will bring." 591

591 Ibid.
From his new position as a partner in his father's law firm, Houston's future looked bright. He would be able to strike at the labor and economic issues that had proved so daunting during the pursuit of his responsibilities with the NAACP. During his tenure there he successfully argued in front of the Supreme Court and federal courts, took the case of George Crawford to the national stage, and confronted the issue of all-white juries. At the same time he remained closely aligned with causes such as the Scottsboro case, which ended with Powell v. Alabama (1934) and the expansion of the 14th Amendment's coverage of basic human rights. At the end of the 1930s, specifically 1936 and 1937, a particularly harsh economic reality descended upon African Americans in the United States, as the country entered the second phase of the Depression. The slim gains made by those employed in manufacturing evaporated as blacks found themselves last hired and first fired, exacerbating an already unbearable poverty rate of ninety-percent. By 1940 it was evident to many that the world was moving ever more ominously toward a great conflagration that would dominate the landscape of the 1940's.

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592 As had now become the Supreme Court's method, they incorporated the Sixth Amendment's guarantee of effective counsel into the states using the 14th Amendment as its vehicle.
593 Abigail Thernstrom and Stephan Thernstrom, America in Black and White: One Nation Indivisible (New York: Touchstone, 1997), 233.
Charles Houston astutely followed international events as fascism rose and expanded in Europe, and he recognized in it many of the same intolerant attitudes towards race and ethnicity that he found unacceptable at home. He was not alone in taking note of the events overseas. The justices of the Supreme Court too became more attuned to the issues, and “Although most of the justices had already developed an antipathy for racism in the law before World War II, the postwar association of Hitler’s purge of the Jews with Jim Crow raised the stakes of complaisance.”

Transnational politics also heightened tensions in the United States as the tumultuous issues of the day entered the political, social, and cultural discourse. Not surprisingly, serious questions concerning communism, colonialism, the creation of the United Nations, U.S. policies abroad, and race itself, influenced African American troops entering the armed forces. And like WWI, many of the men who returned from WWII were determined to end Jim Crow. The 1940’s allowed Houston to focus on three areas that had long been dear to his heart and essential to the process of banishing segregation in the United States. Throughout the 1940’s Houston worked to end discrimination in the military, establish and make effective the Fair Employment Practice Committee, and integrate the railroad brotherhoods. After the bombing of Pearl Harbor, Houston’s first mission was to address discrimination on the part of the military, since little had changed from the time he had joined the ranks as a young man.

His second area of focus assesses the establishment of the Fair Employment Practices Committee (FEPC), as well as Houston’s role on it, and his personal evaluations of the FEPC’s value. FDR’s administration had long been reluctant to address the needs of African American workers, and Houston enjoined the issue on several occasions: formally as a witness in front of Congress while employed by the NAACP, as an expert witness, and in his capacity as a committee member. It seemed to always be the same, however, as FDR’s administration bowed to the political whims of southern Democrats afraid to challenge the regional party hegemony that provided a solid voting bloc supportive of the New Deal agenda. Houston served the FEPC in various capacities, from counsel to board member, and although he resigned on multiple occasions, he recognized that the organization offered a long fought for opportunity to advance the cause of African Americans in the workplace.

A third area of focus, and one which consumed much of Houston’s time from 1940 to 1950, was his association with the railroad brotherhoods. Throughout their history, the railroad brotherhoods had been among the most racially exclusive unions in the country. While there had been substantive gains in the AFL and later within the CIO regarding interracial unionism, the four major brotherhoods representing railroad workers remained committed to excluding black workers. They actively discriminated against African-Americans, and when it came to blacks joining their unions, white unionists went one step further by actively working to have them removed from their positions. When Houston was approached in early 1940 to represent those workers facing discrimination, he quickly agreed. After all of his
many and impressive legal successes to this point, Houston found that integrating the railroad brotherhoods would require all the legal prowess he could muster.

In the 1940’s Houston also labored on a number of other important cases in front of the Federal Courts, as well as the highest court in the land. There were, for example, more education cases, notably the case of *Bluford v. Canada* (1941) which involved a female graduate student and finished what *Gaines* had started by integrating the University of Missouri’s School of Journalism. In addition, he accepted a series of cases involving housing covenants. In *Hurd v. Hodge* (1948) and *Shelley v. Kraemer* (1948), in which he battled against the racially exclusionary devices that plagued African Americans across the nation, restrictive covenants prevented African Americans from purchasing homes, and sharing in the proverbial American dream. He also continued to work to level the all-white primaries which seemed to find new iterations in case after case, as they attempted to prevent African Americans from voting. In all, he would argue five more cases in front of the Supreme Court, losing a single death penalty case. Not to be lost amid all of his professional pursuits was the fact that he also had a new wife, and in 1944, a son Charles Hamilton Houston was born. As noteworthy as his many legal victories are, equally impressive is the great personal sacrifice that he and his family made to bring justice to people long oppressed.
As War Came

Houston was convinced that African Americans' struggle for equality was "inextricably bound with economic struggle." This notion represented the culmination of a career mixing politics and the law in an attempt to find substantive solutions to endemic problems. For example, from the Harris report in the early 1930's Houston understood the necessity of economic advancement and called on the NAACP to use a broader approach that would appeal to the average man on the street rather than the elite. He had been aware of the plight of working people from his time in the military where he befriended enlisted men, and defended them against the false charges of abusive superiors. The Scottsboro Affair reinforced the central place of labor in the fight for equality, leading him to suggest in 1938 that the Association look to labor unions for more 'muscle' in the political arena. Houston had been developing a pragmatic approach, and by 1939 he was quite certain of the priorities required of a successful legal attack.

During an International Labor Defense conference in July of 1939, Houston laid out his agenda, leaving no doubt as to the centrality of labor in the immediate future. Houston believed it was the one common thread linking many of the concerns within the African American community. That day he explained in unguarded terms his outline for achieving freedom, with the highest precedence given

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to the issue of lynching, followed by railroading, and the issue of education. Houston connected lynching to labor during the push for passage of the Costigan-Wagner Anti-Lynching Act by explaining that lynching was used as a way to keep blacks in their place, and restrict their freedom to move and seek better employment. His approach was levelheaded as he explained that "it makes no difference and profits little for a Negro or a white person to work and save for fifty years when a mob can come through, and burn down his home or throw him out of his living quarters. Such a person has no place to go and becomes a refugee here in America."597

The specters of physical violence and intimidation went hand-in-hand with historical attempts by whites to keep black workers under control. Houston went on to explain that in a liberal movement, blacks would inevitably constitute the balance of power. He argued that African Americans had power as a group, and that any movement or group aimed at liberal change would need African Americans on its side. Here Houston was looking forward to blacks asserting their voting rights, giving life to the long-unrealized demographic realities, and displacing entrenched white authorities in many areas of the South. In his speech, Houston reminded the crowd that the fight for the "physical security" of African Americans was necessarily connected to the ILD's "struggle for security for labor leaders, your struggle for security for liberals and progressives."598 In his mind they were connected by a common cause, and joining the labor movement would give African Americans

597 CHH, "Speech to the ILD, July 8, 1939," Box 163-16 Folder 27; Manuscript Division, Moorland-Spingarn Research Center, Howard University.
598 Ibid.
confidence, as they could not depend solely on the effects of positive legislation. It obviously followed that atrocious acts such as lynching would disappear when African-Americans received the vote "because the people who permit lynchings are local people."599

The decision to highlight railroading and education as areas of struggle also made sense in that railroading was an industry that offered a vast number of opportunities for blacks to work for much higher wages, while education was identified as the gateway to the many jobs that were opening up requiring specialized training. Unfortunately, the railroads had long been a bastion of lily-white unionism which made no pretense of excluding blacks from participation, and therefore from some of of the most lucrative working-class jobs. The railroad industry, like many others, was becoming ever more technical, and Houston recognized that education needed to play a considerable role in securing racial uplift.

Houston’s strategy was clear and concise as he connected education to the key issue of labor, citing the fact that African Americans were already excluded from apprenticeships in politics because of unequal educations. "We don't get our apprenticeship in labor organizations," he explained, due in large part to the fact that they were unable to be apprenticed through unions, technical schools, social services, or corporations.600 The cumulative effect of a lack of education meant that many African Americans were excluded from key segments of the workforce. As blacks went forward into the workforce access to education was necessary to allow the

599 Ibid.
600 Ibid.
balance of power to be exercised. This would open the door to local and national politics, and help them effectively make use of the social services that help communities function in the interests of their people. Watching the international arena as Houston did, the specter of war necessarily began to encroach on his strategy.

As we have seen, Houston’s own military experience, from officer training through the termination of the war, was a decided influence in Houston’s life. His experiences during the Great War edged him closer to the field of law, causing him to confront in very real terms the Jim Crow world from which he was sheltered while growing up. The stakes were well-known to him, and there were added concerns over jobs, as the economy converted from one of peace-time to one of wartime, as well as uncertainty over how African-Americans would be treated within the military. More recently Houston made himself known among military leaders in the 1930’s, when he challenged then-Chief of Staff of the U.S. Army Douglas MacArthur over the racism that had improved very little since he wore the uniform.

In an attempt to downplay charges of discrimination within the military, MacArthur wrote an editorial in which he openly denied the existence of Jim Crow within the services. Outraged at this blatant attempt to deny racial segregation and discrimination, Houston wrote a reply that detailed the "gross discrimination against Negroes in the military service." In the article Houston stated that MacArthur had

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"decried the existence of color prejudice." 602 Such a gross denial on MacArthur's part only inflamed an already impassioned Houston, who maintained that seventy-five percent of the combat troops were not promoted, during service and that due to the "complete absence of Negroes in the Tank Corps, and the coast artillery, in the field artillery, in the air Corps, and in the chemical warfare service and other newer arms I must confess your assurances leave me skeptical." 603 MacArthur was unused to such a public and stinging rebuke, but Houston was just getting started. As the U.S. entered World War II, he was prepared to implement a strategy to knock down racial barriers in the military.

As early as January 1940, Houston joined the Courier Committee for Participation in National Defense, an extension of the press that favored participation of African Americans in defense of all forms. Like World War I, World War II witnessed great numbers of African Americans going to war as a patriotic duty. 604 The Courier Committee for Participation in National Defense, however, was not a rubber stamp for the military. The committee maintained high expectations, knowing that the United States might be faced with a fight to secure the liberties and freedoms of all people against the threat of international fascism. This was Houston's call to action, and he would respond with the same passion he brought to protecting a client's innocence in a court of law. For example, as the Army prepared to call up its first selects into the service, Houston became a member of the "Registrant's Advisory

602 Ibid.
603 Ibid.
604 "For Defense Of United States," Pittsburgh Courier, November 2, 1940, 24.
Board of the District Of Columbia," designed to help black men through the process of enlisting.605

In addition to participating on the many boards concerned with discrimination in the armed services, he was also a sought after speaker, raising the public's awareness of the need for change. During one such speech at a conference on "colored participation in the national defense program at the Twelfth Street YMCA," Dean William Hastie, the civilian aid to Secretary of War Henry Stimson, reported good news to the crowd related to the projected additions of African American forces in 1941. Later that same night "Doctor Charles Houston outlined the conference's procedure for the forthcoming weeks. He said conference demands included all ratings and assignments [of the military] were to be made on merit: a fair share of appointments of colored youth as midshipmen at the Naval Academy and fair treatment for colored youth's appointed to the Naval Academy."606 He was not alone as he attempted to keep protests against Jim Crow in all of its incarnations on the national stage. Houston used his many organizational affiliations, most notably the NAACP, to sustain the focus on discrimination at home as African Americans fought for freedom abroad.607 This effort crystallized with the Double V campaign, renamed for victory abroad, against the enemy, and victory at home against racism.

Given the dire need for American manpower on the threshold of war, the question arises, why would Roosevelt deny skilled men positions that would allow

them to utilize their talents to the benefit of the nation? According to Lauren Rebecca Sklaroff, men like Charles Houston, James Weldon Johnson, and Oscar DePriest had long voiced their frustration to the president himself, criticizing his continued deference to southern Democrats. In a letter to Franklin Roosevelt in the mid-30’s Houston cautioned that if he neglected to support such bills as the Costigan-Wagner Anti-Lynching Bill, that it could cost him the support of African-Americans in the 1936 election. It came as no surprise to Houston that the president was unwilling to risk losing Congress and the southern Democrats as a voting bloc, over the divisive issue of lynching, and discrimination. Roosevelt, a political pragmatist when it came to the issue of race, was not ready to jeopardize his vision for the New Deal as the U.S. headed into war.

Unfortunately, while the economy was transformed, the military was largely operating under the same Jim Crow standards that guided its conduct in the First World War. As had always been the case, Houston and others were quite willing to take their protest to the president, organize for change, and still maintain that it was in blacks’ best interests of to join the military, and join the fight to liberate the world from fascism. These frustrations, coupled with America's need for laborers led A. Philip Randolph of the Brotherhood of Sleeping Car Porters to plan a march on

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608 Lauren Rebecca Sklaroff, Black Culture in the New Deal: The Quest for Civil Rights in the Roosevelt Era (Chapel Hill: University Of North Carolina Press, 2009), 26. Equally interesting here is Sklaroff's argument that FDR allowed cultural boundaries to be crossed regarding race, while the administration was reluctant to advocate for an end to segregation, or anti-lynching legislation. For example, individuals like Paul Robison and Marian Anderson, but was unwilling to challenge the existing political structures of southern Democrats and directly confronting the issue of race in any way that would jeopardize his established voting bloc.
Washington. In turn, the political pressure of the proposed march led FDR to establish the Fair Employment Practices Committee.⁶⁰⁹

Fair Employment

In one of Franklin Delano Roosevelt's classic fireside chats on January 11, 1944, he outlined the need for a second economic Bill of Rights. As the public huddled by their radios listening in rapt attention, he explained that "true individual freedom cannot exist without economic security and independence, necessitous men are not free men, people who are hungry, people who are out of a job are the stuff of which dictatorships are made."⁶¹⁰ What FDR maintained regarding economic independence in 1944 had long been accepted wisdom by those in the African American community, Charles Houston in particular, as he worked for the economic liberation of blacks. He understood that economic dependence was a major stumbling block in the long-term goal of obtaining true equality in the United States.

In Houston's earlier cases he had been able to gain access to the professional classes, at least legally as in the Gaines case, while schools did their best to outmaneuver their new legal obligations. Attempting to complete what Gaines had started, he proceeded to open other graduate opportunities at the University of Missouri. In 1939 he took on the case of Lucile Bluford, who had been denied

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⁶¹⁰ Franklin Delano Roosevelt, Second Economic Bill Of Rights, Fireside Chat, January 11, 1944.
admission to Missouri’s graduate school of journalism because of the color of her
skin, and won. She became the first African American to gain access to the graduate
school. These earlier successes unlocked the doors to professional careers, and
enabled members of this burgeoning class to hire other African Americans. This
represented but a part of Houston’s overall strategy as he worked to cast a broader
legal and political net so as to include all laborers. Although Houston was practicing
independent of the NAACP, he maintained close ties, and the NAACP, realizing the
importance of aligning with unions, took a bold step forward by placing A. Philip
Randolph on their board in 1940.611

The addition of A. Philip Randolph proved fruitful. In 1941 for instance,
Randolph proposed a March on Washington to end the discriminatory policies of the
administration, spawning the March on Washington movement that endured nearly a
decade. That pressure prompted FDR to take a meeting with Randolph and Walter
White of the NAACP to discuss the march. Both men expressed their frustrations
regarding ongoing discrimination in the defense industry, and were able to secure the
promise of an Executive Order creating the Fair Employment Practice Committee.612
Executive Order 8802 was issued on June 25, 1941, and declared an end to
discrimination in hiring in the national defense industries. Disappointingly, the order
conspicuously excluded the military in its definition of such industries.613 The
issuance of Executive Order 8802 fit perfectly within Charles Houston’s broad-

611 Frymer, Black and Blue, 54-55.
612 Zieger, For Jobs and Freedom, 126. Zieger explains that while the issuance of Executive Order
8802 was no panacea, it was in fact a clear departure from previous laws. For example, the NIRA sec.
7. (a) and the NLRB did not protect against discrimination in hiring.
613 Executive Order 8802.
ranging strategy. It had been clear to him for quite some time that the Supreme Court decisions were not going to be enough. Houston believed there was need for enforcement, and that the executive order gave antidiscrimination efforts feasibility by allowing the committee to investigate, with subpoena power, companies under federal contract that engaged in discrimination.\footnote{Genna Rae McNeil, \textit{Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights} (Philadelphia: University Of Pennsylvania Press, 1983), 170.} The great benefit of a Supreme Court decision is that the ruling has the immediate effect of law throughout the entire nation. But what was painfully apparent to all those working in the law was the impotence to enforce those decisions. The Fair Employment Practice Committee (FEPC) added the much needed element of forcing compliance within another branch of government. With its capacity to monitor discriminatory hiring practices in the defense industries poised in the legislature, the executive order was a crucial piece of affirmative legislation. Although issuance of an Executive Order from the president was more quiescent than Houston cared for, it allowed him the opportunity to triangulate, with force, future litigation in the arena of labor.\footnote{“Railroad History”, Inventory of the Blacks in the Railroad Industry Collection, 1946-1954, Box 1 Folder 1 Reel 1; Schomburg Center for Research in Black Culture, New York Public Library.}

It was evident in 1941 that blacks viewed the FEPC as yet another way to counter the unjustifiable discriminatory policies used in the defense industries. When complaints were lodged and found to have merit, hearings could be scheduled. Those hearings began in 1943 with enthusiasm and a bit of trepidation, as there were charges against twenty-two companies as well as the big four of the railroad brotherhoods.\footnote{Genna Rae McNeil, \textit{Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights} (Philadelphia: University Of Pennsylvania Press, 1983), 170.} Demonstrating surprising audacity, the railroad companies admitted
to the allegations of discrimination, but "defended their employment policies on the
grounds that many of the questionable labor agreements had been negotiated with the
assistance and approval of the government agencies and that the practices were in
keeping with the customs and practices of the areas that the railroads operated in."\textsuperscript{616}
The railroad brotherhoods held a privileged status due to the 1934 Railway Act which
designated them as the sole mediator for labor. Labor unions then twisted Congress' original intent to serve their own purposes.

This led to an intolerable exclusion of African American laborers from unions, and as Houston testified from the halls of Congress, led to the brotherhood's becoming "lily white."\textsuperscript{617} Serving in his capacity as unofficial counsel to the newly formed FEPC, Houston grew increasingly frustrated by the foot dragging of the committee, and its reluctance to exert what little power it had. For instance, the committee clearly could have hauled more corporate leaders from offending businesses, and railroads in front of the FEPC. Desperate as Houston was to move aggressively in that direction, the FEPC chose not to act. In response, on January 18, 1943 Houston submitted his letter of resignation to Franklin Roosevelt, expressing his sincere frustration over the continued failure of the committee to address worker complaints. In the letter he cut to the heart of the problem, telling the president that "the time when Negro issues can be disposed of without first conferring with Negroes themselves has passed, and it is important that government officials begin to realize

\textsuperscript{616} Ibid.
\textsuperscript{617} Robert Zieger, \textit{For Jobs and Freedom}, 127-128, and Charles Hamilton Houston, Congressional Record finish citation
that Negroes are citizens not wards." With that, Houston's first association with the Fair Employment Practice Committee ended, although he would return after the committee was reorganized by Roosevelt.

The Congress of Industrial Organizations, along with leaders in the African-American community influenced by Houston, once again applied enough political pressure on Franklin Roosevelt that he issued a new executive order. On May 27, 1943 he issued Executive Order 9346, reorganizing the Fair Employment Practice Committee into a new body with the same name; importantly the FEPC now reported directly to Roosevelt. The reorganization of the FEPC provides an apt illustration of the many benefits that resulted from the vigorously asserted agency of African Americans in the 1940s. These triumphs, however measured, provided a degree of affirmation to Houston's thesis that blacks held the balance of power moving forward in the history of the United States. The political realities surrounding race and the administration loomed as an ever-present damper on progress, as Roosevelt consistently bowed to the southern Democrats, refusing to move quickly to force compliance in federal hiring practices. The excuse offered by the administration was that there was no real option for the president to enforce such rulings. The fact of the matter is that the president had a very powerful tool at his disposal, which was simply to cancel the contracts of those companies guilty of discrimination. Yet the political calculus of Roosevelt led him to conclude that it was better to feign helplessness in

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the matter than hold true to the ethical, moral, and legal, obligations of the office.\footnote{“Railroad History,” Inventory of the Blacks in the Railroad Industry Collection, 1946-1954, Box 1Folder 1 Reel 1; Schomburg Center for Research in Black Culture, New York Public Library.} Understanding the politics of the matter infuriated and invigorated Houston as he maneuvered with the halls of Congress.

Returning to the committee with the new title of "Assistant Special Counsel to the FEPC," Houston could now actively fight from an official position, putting more pressure on not only the unions, but also the administration. When a position opened on the committee itself on February 28, 1944 President Roosevelt personally selected Houston at to fill it. Responding to a congratulatory letter from Roy Wilkins, Houston cautiously replied to Roy saying "thanks about the FEPC, I have no illusions about it, but the job appears to be a spot which may be important on account of future implications; and it will put me on the inside [italics mine] of many problems which otherwise I wouldn't reach."\footnote{McNeil, \textit{Groundwork}, 166.} He knew that being a member of the committee would be challenging as companies, most notably the railroad unions had demonstrated disdain for the rulings and simply ignored them.\footnote{“Railroad History,” Inventory of the Blacks in the Railroad Industry Collection, 1946-1954, Box 1Folder 1 Reel 1; Schomburg Center for Research in Black Culture, New York Public Library, and Genna Rae McNeil, \textit{Groundwork}, 165.}

That spring was not all political infighting and legal argument however, and on March 20, 1944 the Houston family was blessed with the birth of their son Charles Hamilton Houston Jr., nicknamed Bo. The parents were filled with pride, and as Houston's biographer Genna Rae McNeil eloquently points out, his son created a "new center" for Charles. However, the question remained, would he at last find that
delicate balance between family and profession? Would it be possible for Houston
to slow down enough to appreciate his wife and son and still change the world into a
place that would welcome them?

There is no question that his time on the committee was filled with
dissatisfaction at its pace, but as part of his philosophy to move forward in practical
ways, the existence of the national Fair Employment Practice Committee also placed
pressure on the states to establish their own committees. Activists in many states
were then able to point to the existence of the national FEPC as inspiration, and were
successful in establishing state level satellites. The most successful of these was
probably New York’s, which through the efforts of Elmer A. Carter was able to end
brotherhood discrimination in that state by the end of the 1940s. In his many
speeches aimed at the public Houston’s matter-of-fact approach openly advocated for
communities and workers to put pressure on the states. He accomplished this feat by
often urging them to utilize the principles of his own strategy, and not only challenge
laws in the courts, but use a combination of legislation and the courts. Houston's
multipronged approach was meeting with some success at the national and state levels
as state legislatures crafted protections that aided in garnering civil rights in the work
place. Houston though was still able to drive the debate nationally to protect workers
living in less receptive states by chipping away at discrimination through altering
judicial interpretations of the law. He still advocated that workers campaign for

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623 “Railroad History,” Inventory of the Blacks in the Railroad Industry Collection, 1946-1954, Box 1 Folder 1 Reel 1; Schomburg Center for Research in Black Culture, New York Public Library.
624 CHH Speech to the National Lawyers Guild, 1949, Box 163-16 Folder 27; Manuscript Division, Moorland-Spingarn Research Center, Howard University.
rights in the workplace by pushing unions and legislatures, however for those
laboring in industries resistant to equality, such as the railroads, Houston said
referencing the worker, "his protection from discrimination has been the courts."  

Houston went on to make an excellent strategic point in a speech in the fall of
1949, stating that while minorities may be outnumbered at work, "... in court only
one person can speak at a time."  For African-Americans in the 1940s the court was
still a place where redress could be had, particularly in light of the increasing
sensitivity to issues of race amid the backdrop of World War II and fascism's use of
race to endorse genocide. This created legal space that workers used to triangulate
workplace, and legislative action, creating positive change in union and corporate
behavior. Houston optimistically observed that after the United States Supreme
Court's decision in Railway Mail Association v. Corsi (1945) New York State's "Civil
Rights Act prohibiting a labor union from excluding workers from membership
because of color or creed was upheld, some of the unions adopted amendments to
their constitutions that in states having such laws the color bar in the Constitution
should be inoperative."  

To accompany the fortuitous achievement in the state of New York there were
also incredibly encouraging gains in California. In the case of Joseph James et al. v.
Marinship Corporation, et al., for example in which the International Brotherhood of

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625 CHH, "Foul Employment Practice On The Railroads" Speech presented to the National Urban
League Conference, September 8, 1949, Inventory of the Blacks in the Railroad Industry Collection,
1946-1954, Box 1 Folder 12 Reel 1; Schomburg Center for Research in Black Culture, New York
Public Library.
626 Ibid.
627 Ibid., 4.
Boilermakers kept openly segregated unions, the California Supreme Court ordered the union to stop discriminating. This victory added another important state to the cadre banning discrimination in employment, but as Houston had continued to profess, there could be no rest as these cases presented only steps in a long journey. The problem, as Houston identified it, was that although these were admittedly laudable circumstances the overwhelming number of firemen and brakeman working in the railroads resided in states that had no state civil rights acts to protect them.\textsuperscript{628} It was obvious to Houston that the railroad brotherhoods’ stubborn adherence to discriminatory policies, evidenced by their blatant disregard of the Fair Employment Practice’s orders to stop, left him with a single option: craft a legal strategy to take them to the highest court in the land, and change the law.

Foul Employment

Prior to the Civil War blacks were relegated to jobs within the railroads that uniformly earned low wages, serving the industry’s objective to suppress wages and combat unionization. African Americans were a reliable source of cheap labor well into the 19th century, when as a result of that industry’s manipulation of race, black workers began to run up against organized efforts by labor to "eliminate black workers from the railroad industry."\textsuperscript{629} As union membership in the railroad industry

\textsuperscript{628} Ibid., and Robert Zieger, \textit{For Jobs and Freedom}, 131.
\textsuperscript{629} “Railroad History”, Inventory of the Blacks in the Railroad Industry Collection, 1946-1954, Box 1 Folder1 Reel 1; Schomburg Center for Research in Black Culture, New York Public Library.
expanded, other unions followed their lead and began to discriminate on the same level as the brotherhoods. Discrimination in the railroad industry engulfed most jobs, "including, station employees, shop workers, track laborers, and dining car employees, unions, like the brotherhoods either excluded African Americans, or allowed segregated unions." Railway companies themselves were more than willing to go along with this arrangement until of course, wages became an issue, at which point they used race to their advantage again. Houston informed Congress on the subject of ownership’s persistent manipulation of race in that industry, explaining that they were undeniably using race as a wedge issue to keep employees fighting amongst themselves.630 The use of race as a wedge discouraging worker unity was a strategy nurtured by industries across the nation.

A brief history of the brotherhoods reveals their methodical attempt to exclude African Americans. Houston providing historical background to an audience in Denver, Colorado explained that “It is significant that the oldest railway labor union, the Brotherhood of the Footboard which has evolved into the Brotherhood of Locomotive Engineers, was organized during the Civil War, in 1863, on the Michigan Central party as a protest by white engineers and fireman against the proposal of the Michigan Central to hire some Negro fireman in the Civil War emergency."631 Demonstrating that discriminatory brotherhoods were not peculiar to southern regions, in 1910 the craft brotherhoods actually went so far as to use the threat of

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630 Ibid.
strikes, and to strike themselves to win agreements with the railroads reducing the number of black employees. During World War I black workers experienced a small reprieve during which the government took over, instituting equal pay for equal work. That reprieve was short lived. After WWI labor agreements between the brotherhoods and railroad companies hinged on the ability to exclude or reject them from unions, with particularly harsh agreements coming in 1937 and 1941.632

Equal pay for equal work was instituted during World War I under General Order Number 27, issued in May of 1918. The impact of the order was immediate, and resulted in an unexpected windfall for African American firemen and brakemen more than doubling their income. For instance "some Negro brakeman wages jumped from $70 to more than $200 a month as a result of the order."633 Charles Houston, examining the history of the railroads in preparation for his cases, pointed with great perspicuity to that moment when the railroads "began to lose interest in retaining Negro firemen and brakemen."634 To the railroad’s way of thinking, if they were going to have to pay a white man's wages, they were going to hire white men. The Railway Labor Act was amended in 1934 to outlaw yellow dog contracts, and did allow union to negotiation on behalf of a particular craft or class. The amended act is sometimes viewed as a restrictive law since it was used by the brotherhoods as a tool to exclude blacks. Though unintended, the dominant white unions used their

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632 “Railroad History,” Inventory of the Blacks in the Railroad Industry Collection, 1946-1954, Box 1 Folder 1 Reel 1; Schomburg Center for Research in Black Culture, New York Public Library.
634 Ibid.
exclusive right to bargain with the railroads to either restrict, or exclude the hiring of blacks. However, the law itself was not intended to be used in a restrictive manner; rather it was meant to allow unions to bargain collectively to negotiate wages, safe working conditions, hours of service, etc., free from corporate machinations. The amended Railway Labor Act of 1934, in fact, served as the foundation for Charles Houston's groundbreaking arguments in *Steele v. Louisville*, in 1944.

A law that was clearly designed to protect workers and allow them to bargain in good faith was unfortunately used by the brotherhoods to secure privileged positions for whites. Houston found ample evidence of the dire consequences related to racially exclusive unions when he looked into the census figures. In 1920 he noted there were 6,505 black firemen, and by 1940 the number had been reduced to 2,263. In 1920 there were 8,275 brakeman, yardmen, and switchmen, but by the 1940 census, that number was alarmingly reduced to 2,739. To any objective observer the numbers indicated a disturbing trend; rather than provide equal wages to African Americans, corporations were simply getting rid of them, and as Houston painfully noted, all the brotherhoods had color bars.

In practical terms what the brotherhoods accomplished was the effective regulation of black employees to a non-promotable status. Southern railways had

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635 CHH, "The Legal Struggle for Protection of Minority Workers' Rights on American Railroads," Speech presented to the National Association for the Advancement of Colored People, July 14, 1949, Inventory of the Blacks in the Railroad Industry Collection, 1946-1954, Box 1Folder 1 Reel 1; Schomburg Center for Research in Black Culture, New York Public Library.

further consigned African Americans to menial positions "exploiting their labor," as Houston observed. In his opinion management used black labor as leverage against white workers, falling back on the tried-and-true method of bringing in blacks as strikebreakers. However Houston cited a heretofore unobserved advantage, pointing out that the Railway Labor Act of 1934 "took away from management the chance to play the Negro firemen and brakeman against the white firemen and brakeman." Overall, the first forty years of the 20th century were filled with frustration, with blacks receiving only rare respites of evenhanded treatment during World War I, and during the period including the federal government’s preparation for wartime. African Americans, excluded from well paying jobs and fair treatment by the unions, ultimately formed their own unions to avoid low-wage careers.

A. Philip Randolph's organization of the Brotherhood of Sleeping Car Porters in 1925 was such a response to the exclusionary treatment of the brotherhoods. By 1940 the Brotherhood of Sleeping Car Porters and the Order of Sleeping Car Conductors (all white) vied for positions with the Pullman Company. Randolph was disturbed by the fact that the Pullman Company classified blacks as "Porter-in-charge," rather than pay them the supervisor’s wage exclusively held by members of the Order Of Sleeping Car Conductors. Seeking a legislative remedy the sleeping car porters attempted to arrange a hearing in front of Congress, but were frustrated to find that avenue blocked by opposing interests. When that possibility failed, they appealed to the AFL, which sided with the sleeping car porters. However, the AFL

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637 Ibid., 3-4.
was simply ignored by the Order of Sleeping Car Conductors, which again established segregated and tiered wages.638 Within this environment of segregated unions, outright exclusion, ineffective guidance by the AFL, and lack of redress in either Congress or the courts, black railroad workers reacted by continuing to form their own unions.

Understanding the history of the railroads as Houston did, it did not surprise when Samuel Clark, the Grand President of the Association of Colored Railway Trainmen and Locomotive Firemen, and an associate walked into his office to seek counsel regarding an effective challenge to the discriminatory practices of the railroads in the railroad unions. They brought with them substantial stacks of information bolstering their case in the hopes that Houston would accept them as clients. After listening to their plight, and to their great relief, Houston agreed. It is interesting that despite all he had accomplished he felt obligated to explain that he was not a labor lawyer, but a constitutional one. Houston’s reputation was known to both men, but this display of modesty exemplifies the frankness and humility that characterized Houston’s approach to the law and his clients. Looking back, Samuel Clark recounted that "Mister Houston began to work with us for $25 a day. If he argued the case in one day we only owed him $25 and paid his way down here and back and his expenses... Mister Waddy [his partner] was put on $10 a day."639

Houston was forthright in explaining how great the challenges were that lay ahead, in part because there really was no case law that applied to them directly. As

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638 Ibid., 7-8.
he ruminated about possible legal arguments, he was not assured that victory would be forthcoming. But what Houston was able to do for Samuel Clark is instill a sense of confidence as he looked his clients squarely in the eyes and told them, you "do not have any laws to protect you, but I am going to make some laws to protect you. I am going to make them." This commitment to the labor leaders reflected the singular focus that Charles Houston brought to any task or challenge, and resonated with the supreme confidence of a legal mind, fully engaged at the pinnacle of his career. It was from this point that he began to strategize how best to accomplish the integration of the brotherhoods.

Houston felt the Railway Labor Act that allowed the National Mediation Board "to certify the majority as exclusive bargaining agent," could provide the basis for a legal argument regarding the Fifth Amendment protections, as well as perhaps the Equal Protection Clause of the 14th Amendment. Houston’s convictions was such because of the fact these exclusive bargaining agents "use their status to discriminate, complicated by the fact that the National Railway Adjustment Board rarely, if ever, addressed complaints by African Americans." It was plain to Houston that because the federal government was the actor there would be a great deal of support for his claim of a Fifth Amendment violation, with an undeniable infringement of the due process clause. Others within the industry began to notice Houston's work with the railroads, most notably A. Philip Randolph, who found Houston to be "immensely valuable." Randolph noted that Houston was "racially

640 Ibid., 158.
641 Ibid.
oriented," that is to say "he was not ashamed to fight for black people." An ally like Randolph would be immensely helpful to Houston, because he was able to put enormous pressure on the White House through his organization and force of personality.

As Thurgood Marshall later observed when discussing the early days of his career with Houston, one can talk about cases all he wants, but cases come to you the way they are. This was true of Houston's first foray into railroad law when he took on the Teague case. Since it was decided early on that the facts of the case lacked an appropriate federal question, it was determined that another case would be needed. In Teague Houston argued that a secret compromise between the brotherhoods in the railroad companies "broke the railroads' uniform individual contracts with the plaintiff and other Negro locomotive firemen and violated or destroyed their vested seniority rights." He also argued that the secret agreement of 1938 posed "a violation of its statutory and fiduciary duty and unlawful abuse of its authority under the Railway Labor Act." But as Houston asserted, the right being argued was not directly stated in the Railway Labor Act so there was no federal question. He ultimately abandoned Teague for a better case. That case would actually be a pair of cases, both of which presented the appropriate federal questions for which Houston had been looking.

The two cases that Houston argued in 1944 were Tunstall v. the Brotherhood of Locomotive Firemen and Enginemen, and Steele v. Louisville & N.R. Co. The

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643 Ibid., 160-161.
question before the court in Steele v. Louisville (1944) was "whether the Railway Labor Act... imposes on a labor organization, acting by authority of the statute as exclusive bargaining representative of a craft or class of railway employees, the duty to represent all the employees in the craft without discrimination because of their race, and, if so, whether the courts have jurisdiction to protect the minority of the craft or class from violation of such obligation." In his arguments Houston cut quickly to the core of his stratagem, demonstrating that because the railroad brotherhoods received their power to negotiate from the federal Railway Labor Act, they were obligated to act in a constitutionally appropriate manner.

He proceeded to reveal that blacks were excluded from membership by the Brotherhood of Locomotive Firemen and Enginemen, who were employed by the Louisville & Nashville Railroad Company. Additionally, he cataloged their efforts on March 28, 1940 to "exclude all Negro firemen from service," and told how on February 18, 1941 a restrictive agreement between the brotherhood and the railroad took place that would limit the number of black workers to "not more than fifty percent of the firemen in each class of service and each seniority district of the carriers." The agreement also controlled the seniority rights of black firemen working for the railroad. Finally, Houston pointed out that until April 8, 1941, his client was in a "passenger pool" to which one white and five black firemen were assigned, indicating that these jobs were desirable because of their wages, the hours, and working conditions. Despite the fact that his client had always been a good worker

645 Ibid.
who received good reviews, the company first had the mileage he worked reduced and then all of the jobs in his pool were vacated under the agreement. Then "the brotherhood and railroad, acting under the agreement, disqualified all the Negro firemen and replaced them with four white men, members of the brotherhood, all junior in seniority to petitioner and no more competent or worthy." 646

After recounting the arguments made on behalf of the petitioner, Chief Justice Harlan Fiske Stone went to the heart of the matter, declaring that "it is the federal statute which condemns as unlawful the brotherhood's conduct." Chief Justice Stone stated in the majority opinion that "so long as a labor union assumes to act as the statutory representative of a craft, it cannot rightly refuse to perform the duty, which is inseparable from the power of representation conferred upon it, to represent the entire membership of the craft." The decision went further, demanding that unions cover even those workers who are not members, "without hostile discrimination, fairly, impartially, and in good faith." 648

Justices Black and Murphy concurred, declaring that "the utter disregard for the dignity and well-being of colored citizens shown by this record is so pronounced as to demand the invocation of constitutional condemnation. To decide the case and to analyze the statute solely upon the basis of legal niceties, while remaining mute and placid as to the obvious and oppressive deprivation of constitutional guarantees, is to make the judicial function something less than it should be." 649 One factor that

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646 Ibid., 195-197.
647 Ibid., 204.
648 Ibid.
649 Ibid., 207-208
made these cases particularly cumbersome for lawyers like Houston to address in a court of law was the fact that unions were seen as voluntary associations, but in this case the justices rightly noted, "its power to represent and bind all members of a class or craft is derived solely from Congress." The justices in 1944 sounded every bit as convinced in their legal reasoning as the justices did in the 1954 Brown v. Board decision, when they said that "a sound democracy cannot allow such discrimination to go unchallenged. Racism is far too virulent today to permit the slightest refusal, in the light of a constitution that abhors it, to expose and condemn it wherever it appears in the course of statutory interpretation." Stee1e was a resounding victory for black workers, and Houston, in a particularly dazzling display of legal courage and stamina, actually argued both Stee1e and Tunstall in succession on the same day. He served as lead counsel for Tunstall on the morning of November 14, and only hours after argued Stee1e, concluding that argument on November 15th.

Tunstall was the companion case to Stee1e, and involved the Brotherhood of Locomotive Firemen and Enginemen. The question before the court was similar to that of Stee1e in that the justices wanted to know if the union was obligated to represent all employees. The court took the case in order to answer whether or not the "federal courts have jurisdiction to entertain a non-diversity suit in which the petitioner, a Railway employee is subject to the act..." Chief Justice Stone again delivered the opinion of the Court, and in short order quoted the decision in Stee1e,

650 Ibid.
651 Ibid., 207-208.
explaining that unions did in fact have to represent all employees, and that the federal
courts did indeed have jurisdiction over this issue. In bold language he went on to
state that "the duty imposed by the Railway Labor Act on the Brotherhood, as
bargaining representative, is a federal right implied from the statute and the policy
which it has adopted. It is a federal statute which condemns as unlawful
brotherhoods conduct."653

Both cases established fair representation, tremendously impacting the future
of public policy and labor relations regarding the railroad industry.654 From a
constitutional perspective as well, it is significant that both decisions addressed the
Federal Railway Act, and drew the logical connection between it and the Fifth
Amendment violation of the Constitution. Aside from substantiating Houston’s legal
arguments in front of the court, these opinions affirmed his promise to Samuel Clark
that he would “make the law,” to protect black railroaders. The judgment protected
their seniority and employment rights by disallowing unions the ability “to force a
racially discriminatory agreement…” on any future railroad that disadvantaged any
group of employees.655 The financial benefits of inclusion in the unions were
impressive as Houston forthrightly declared “railroad pay is hour for hour, the highest
pay in any field of industry.”

653 Ibid.
654 CHH “Foul Employment On the Railroads,” Speech presented to the National Urban League
Conference, September 8, 1949, Inventory of the Blacks in the Railroad Industry Collection, 1946-
1954, Box 1Folder 12 Reel 1; Schomburg Center for Research in Black Culture, New York Public
Library.
655 Ibid.
For example, a railway brakeman could earn four to five hundred dollars a month, which was an excellent wage, particularly when Houston calculated that the average brakeman put in three hours of physical labor a day. He reinforced the nexus of education and work, affirming that “We expect them (African Americans) to run the trains, fly planes, and persevere until they reach the very top of the industrial organization.” The railroad decisions confirmed Houston’s multipronged approach, and the New Deal Era legislation proved vital to the successful arguments in front of the Supreme Court. Indeed, rather than inhibiting blacks from attaining an equal place on the railroads and in the brotherhoods, they served as the foundation which Houston and future lawyers would demonstrate that racial exclusion was unconstitutional.

The end of the war ushered in concerns over the reconversion of the American economy. That apprehension, together with national security concerns provided the context that defined and shaped federal politics, as well as the Truman administration’s policies from 1945 to 1952. Taken together, the postwar agendas of the president and the republicans clashed over visions of labor, and later race, which led to a democratic congressional defeat in 1946, and the fracturing of the Democratic Party in 1948. For the first time in American history a president was required to take

656 Ibid.
657 Ibid.
658 From Archibald to Bronsen, Inventory of the Blacks in the Railroad Industry Collection, 1946-1954, Box 1 Folder 2 Reel 1; Schomburg Center for Research in Black Culture, New York Public Library. For example, in a letter from Archibald Bromsen (attorney for the Federation of Southern Colored Locomotive Fireman Unions) to the Brotherhood of Locomotive Firemen and Enginemen letting them know that restrictive tests were “subversive of the Railway Labor Act and the decision of the Supreme Court in the Tunstall case…”
an economy operating at full capacity for war, and reconverst it without inflation, provide for full employment, accommodate the new social, political, and economic forces unleashed by the war, while maintaining the political viability of the party. Harry Truman’s attempt to negotiate this minefield was to have profound effects on the politics of the Democratic Party and the lives of African American men and women who were reconstructing their own lives.

Postwar and Reconversion

Historians have tended to frame the New Deal Era in one of two ways. One group views the government from a perspective that can best be explained as reactive to the societal influences that operate as antecedents of change. This perspective is often referred to as a “society based” interpretive model. The government and its institutions are responsive to the democratic impulses for change, and accommodate those forces with the appropriate institutional response. On the other hand, another group of historians has identified change as occurring largely from the notion that it is the institutions of government and a small cadre of influential persons that drive the political agenda. Individuals and institutions are not seen as primarily dismissive of the general will, although that could occur; rather they have an established agenda and the institutional wherewithal to carry it out. Those operating from this perspective are informed by a “polity based” philosophy. Professor Alan Brinkley, in his book, *The End of Reform*, has offered a third perspective, which more fully
accommodates the nuanced realities of American political behavior. According to Brinkley, neither the society based nor the polity-based approach adequately addressed New Deal societal or policy realities. Instead, he bridges the two philosophies in a way that recognizes the incomplete nature of the two individually. He persuasively argues that the New Deal Era is replete with examples of governmental action without regard to outside groups and any number of examples demonstrating societal forces that were accommodated. Brinkley’s harmonization of these two divergent views provides the appropriate context to examine Harry Truman’s relationship with labor and its consequences.

Truman was himself a transitional figure that bridges the polity and society based approaches as well as reform and rights based New Dealers, which was defined by its emphasis on reform of government without attaching itself to the rights based issues of race or gender. Instead New Dealers were of the opinion that “the nation’s greatest problems were rooted in the structure of modern industrial capitalism.” This assumption guided Franklin Delano Roosevelt’s actions to mend these problems using government. Roosevelt was also aware of the fact that introducing divisive issues like race and gender were also responsible for the undoing of the Democratic Party after WWI. Truman’s political inculcation and personal beliefs disposed him to be fully supportive of this type reformist progressivism. But, postwar actualities, domestic, foreign and personal drove Truman to accept rights based progressivism.

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660 Ibid., p. 5.
By retaining reform progressivism and acquiring the “contentious” rights based agenda Harry Truman found himself separated from an American polity that was not interested in indulging unionism, restrictive economic policies like reconversion, or civil rights issues like integration and their implementation.\textsuperscript{661}

The conservative backlash by in the United States clashed with other diametrically opposed forces. Labor unions and business were poised and prepared to confront one another to make up for perceived wartime concessions. Millions of black men returning from service, some of whom liberated concentration camps, came home to a segregated society prepared for change. Houston understood the right to work as an inherent part of that reform, forcefully asserting that “The Negroes’ fight for the right to work is part of the labor struggle to eliminate job discrimination against all citizens...The right to work is essential and its limitation is prohibited under the Fifth and Fourteenth Amendments to the Constitution.”\textsuperscript{662}

Houston’s powerful determination to make the right to work a reality for everyone would lead him to confront the President of the United States over the discriminatory hiring practices of the Capital Transit Company in Washington DC. This conflict pitted Charles Hamilton Houston against President Harry Truman in a test of wills over whether or not the FEPC would be taken seriously by the new president.\textsuperscript{663} To Houston’s thinking the Capital Transit situation was a simple matter for the Fair

\textsuperscript{661} Ibid., p. 6.
\textsuperscript{663} McNeil, \textit{Groundwork}, 171.
Employment Practice Committee; it was clear that Capital Transit had discriminated not only in hiring, but also promotion opportunities for African Americans.

In a letter to Harry S. Truman dated November 25, 1945, Houston outlined the nature of the grievances against Capital Transit. Houston detailed a number of instances in which the FEPC had communicated with Capital Transit Company over its practices, attempting to obtain assurances that it would stop such discriminatory policies. When all of these communications failed he informed the president that the committee ultimately and unanimously voted to issue a directive unless it "receives direct orders to the contrary from you, to be followed immediately by a conference with you." Houston went on to explain that after having examined the executive orders it was quite clear that Capital Transit was in violation of those orders, and that a decision from the committee should be issued.

Truman, on the other hand, did not see eye to eye with Houston due to the fact that the Capital Transit Company had been seized by the federal government during the war. Because of the clouded circumstances surrounding the seizure, he maintained that any decision should be set aside until the administration had adequately clarified the Capital Transit legal responsibilities. After allowing adequate time for the president to address the decision made by the Fair Employment Practice Committee, Houston decided that the only honorable thing to do was to resign, a custom seldom used in American politics. In a letter to the President dated

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664 To Harry S. Truman, from Charles Hamilton Houston, Harry S. Truman Library, November 25, 1945.
665 Ibid.
December 3, 1945 Charles Houston did just that, explaining, we asked “that you give
the committee opportunity to confer with you. Return registry receipt shows the letter
delivered to the White House November 26. To date we have not received even an
acknowledgment of the letter.” He then went on to detail exactly why the Fair
Employment Practice Committee was assembled and the executive orders under
which it was created and altered to conform to its current form and purpose.
Houston's letter then pointedly acknowledged Truman’s inaction complaining that
"since the effect of your intervention in the Capital Transit case is not to eliminate the
discrimination but to condone it, to that extent not only repudiate the committee, but
more important, you nullify the executive orders themselves." Continuing to
recount the historical facts, he headed towards his resignation by pointing to the
specious nature of the government’s activities at home, and the hypocrisy of the
President’s actions abroad. He acerbically stated that "the issue of the Capital Transit
case far transcends the question whether a few Negro workers shall be placed on the
platform of streetcars and buses and as traffic checkers and Capital Transit system. It
raises the fundamental question of the basic government attitude toward minorities.
The failure of the government to enforce democratic practices and to protect
minorities in its own capital makes its expressed concern for national minorities
abroad somewhat specious and its interference in the domestic affairs of other
countries premature.”

667 Ibid.
668 Ibid.
Harry Truman let Houston's resignation letter sit for a few days before he finally sent him a letter on December 7, 1945. He simply acknowledged that the letter had been received and then continued in matter-of-fact language to explain that according to his findings there was a contradiction between the purpose of the seizure, which was to provide transportation during a time of war, and Houston's assertion. The "Property was not seized for the purpose of enforcing the aims of the Fair Employment Practice Committee, laudable as these aims are," he explained, "but to guarantee transportation for the citizens of Washington and vicinity." Truman went on in rather cursory fashion to regretfully accept Houston's resignation, and once again Houston found himself off the FEPC, and using the law to make his point.

Why would Harry Truman allow a man as talented as Houston to resign over blatantly discriminatory policies, when in 1947 Truman would integrate the armed forces? That move, of course, required much political clout, and was not a matter of simply following the directives of the Fair Employment Practice Committee. Historian Kari Fredrickson offers her observation in the *Dixiecrat Revolt and the End of the Solid South*, pointing out that in the first year and a half of Truman's presidency he attempted to balance the liberalism of FDR that so offended the South, with a policy that inevitably alienated his own left wing of the same party. This helps to explain why he reversed himself on the poll tax, for example when Truman referred to it as a state's rights issue, and why he would let somebody like Houston resign.

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over discriminatory hiring practices.\textsuperscript{670} The paradox that Truman presents, however, is that he was willing to cater to the south on issues like the poll tax, yet move to integrate the armed forces, and support anti-lynching legislation, both clearly anathema to southern democrats. These decisions also ran squarely against the established policies of FDR, and were made more pronounced by Truman’s use of a stronger, more voluble rhetoric than his predecessor.\textsuperscript{671} Truman’s contradictory stances notwithstanding, Houston lost little time in moving forward.

The postwar years were a testament to Houston’s continued efforts to hammer away at discrimination in all of its forms. This time he focused on discrimination in housing, another area critical to the financial solvency of working Americans. Without question the largest purchase of any American citizen is their home, and for most people that acquisition sets in motion the fundamental acquisition of familial wealth. In turn, that wealth helps them to finance the aspirations of their sons and daughters, and perhaps furnish an education, or a home of their own. To have that opportunity artificially limited by financial agreements among homeowners and financial institutions was destructive to the futures of successive generations of African American families. To fortify his attack on housing covenants, Houston looked to international politics when domestic remedies seemed less fruitful.

In 1946, serving as vice-president of the American Council of Race Relations, Houston framed the government’s obligations to end segregation using international agreements. “The restrictive covenant, barring sale to or occupancy by colored

\textsuperscript{670} McMahon, \textit{Reconsidering Roosevelt}, 180.
\textsuperscript{671} Ibid., 180-181.
persons of property in areas covered by such agreements, ‘is outlawed by the language of the recent international pacts signed by the government.’” He cited the treaty of Chapultepec, signed in Mexico City in 1945, and the United Nations Charter, asserting that ‘these international agreements obligate our government to work to eliminate all racial discrimination.”

Denied the ability to purchase a home in areas of increased property values, relegated instead to segregated areas these families were negatively impacted not only in the acquisition of assets, but also with regard to access to better schools for the children. Houston argued two companion housing cases, Shelley V. Kraemer (1948), and Hurd v. Hodge (1948); each case challenged the legitimacy of housing covenants, those long standing roadblocks to fair housing. The cases originated in St. Louis with George Vaughn, whose parents were themselves slaves. Vaughn had been urged by William Hastie and Thurgood Marshall to take the slower route via the lower courts to achieve victories, but Vaughn would have none of that, and instead appealed directly to the Supreme Court.

Houston communicated with Vaughn to see if it was possible to hear the two cases together, but Vaughn casually evaded the overture to coordinate their efforts. In a twist of fate, the Supreme Court actually decided to hear Houston's case first.

With the date set, the NAACP thought it wise to organize a conference with all of the

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675 “U.S. Supreme Court Asked to Review Restrictive Covenants,” Atlanta Daily World, August 26, 1947, 1.
attorneys involving the covenant cases on September 6, 1947. Houston attempted unsuccessfully to bring Vaughn around to their way of thinking, hoping to focus on state action because that is what the courts had arguably responded to more favorably. Vaughn instead wanted to utilize the 13th Amendment argument, asserting that "all citizens of the United States shall have the same right... As is enjoyed by white citizens thereof to... purchase... real and personal property." While Houston's arguments in front of the court were brilliant and persuasive, it was the elder Vaughn who stole the show with his emotional appeal to the court. At the end of his poignant argument over the injustice of restrictive covenants, he looked directly at the justices and said in a strong voice, "let me come in and sit by the fire. I helped build the house." After that, restrictive covenants were no longer a viable option in the United States. While redlining and other machinations would continue to frustrate attempts by African Americans to buy homes, the legal foothold to fight those obstreperous efforts to exclude them from buying a piece of the American dream was illegal.

It remained clear to Houston, however, that his efforts in the area of railroad discrimination were going to have to continue on multiple fronts, from the courts and positive legislation, to the organizational level. To that end, Houston along with leaders of five brotherhoods formed an organization known as the Negro Railway Labor Executive Committee. Its purpose was twofold, to concentrate on collecting and disseminating information, and then discover grounds for mutual cooperation. At

676 Ibid., 112.
the first meeting of the Negro Railway Labor Executive Committee the unions represented were the Association of Colored Railway Train Men and Locomotive Firemen, Colored Trainmen of America, the International Association of Railway Employees, the Southern Association of Colored Railway Train Men, and the Dining Car and Railroad Workers Union. Houston, never one to sit back and wait for others, immediately recommended that the group go on record as "supporting minority groups in their fight against discrimination," and also push for an "amendment to the immigration law to extend admission and grant citizenship to all Asiatic people." The minutes of the meeting on February 12, 1949 also revealed that Houston was resolute in his belief that litigation in the courts "will have a profound effect on Negroes in the industry," as he indefatigably continued to link education with employment, also encouraging the group to ensure that education was properly emphasized so qualified people were available to take these jobs.678

For most of his life, including his childhood Charles Houston traveled in a comfortable middle and upper-middle-class circle that garnered a measure of protection against the particularly visceral nature of racism that was experienced by his peers of lesser means. While it is true that Houston experienced firsthand the hurtful sting of racism particularly during his tenure in the military by and large his station in life protected him from the daily onslaught of racist invectives. In 1949 an incident involving his son brought the necessity of changing the country and its

678 Memorandum, Negro Railway Labor Executive Committee on March 6, 1949 and February 12, 1949, Inventory of the Blacks in the Railroad Industry Collection, 1946-1954, Box 1 Folder 2 Reel 1; Schomburg Center for Research in Black Culture, New York Public Library.
culture desperately close to his heart, however. His wife Henrietta had left Charlie Junior in his father's care when he found it necessary to run an errand. The family's longtime friend Joseph Waddy recounted the incident: "Charlie had to go to the drugstore for something he took the boy along. While Charlie was being taken care of, the boy climbed up on a stool by the soda fountain and the man behind the fountain said to him 'get down from there, you little nigger-you have got no business here.' When they got back to the office, we had to take Charlie in the back room and give him a sedative."  

How Charles felt on the inside one can only speculate, however as a father who loved his child and wanted to protect him from the harsher realities of the world, it must have cut him to the core, inspiring him to redouble his already considerable efforts to undo Jim Crow. Unfortunately, a major roadblock to Houston’s continued success was becoming evident as the pace and stress of life began to take a measured toll on his health. Over the years, Houston had experienced moments when his heart had given him cause for concern, but he never let it deter his efforts to develop a stratagem for ridding the nation of its racialized policies. To his detriment, Houston tended to ignore signals of ill health, and actually seemed motivated to work even harder. Near the end of the 1940’s Houston hammered out a five-point plan that in part called for continuing to work for fair political representation, participation in elections, as well as maintaining the to fight against the race-based limitations of union memberships. As Houston outlined in a 1949 speech in front of the National Groundwork, 186-187, and Segal’s *In Any Fight Some Fall*.

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679 McNeil’s, *Groundwork*, 186-187, and Segal’s *In Any Fight Some Fall*. 
Urban League “... the basis of industrial democracy demands that all workers be admitted to the union without distinction or discrimination, or else the union should be disqualified from representing the workers discriminated against.” The fourth line of attack would seek relief against the National Railroad Adjustment Board, and strike at the heart of "lily-white unions." Finally, the fifth line of attack would work against racial employment bans of any kind. Houston argued that "unless the racial ban against employment can be removed, the legal victories will hardly be more than a celebration of the last Negro Railway worker." Once again Houston made everyone recognize the necessity of a multipronged attack against the existence of racism in the United States. Economic and social liberation would not occur using solely the courts, or legislation, or organization; it was in fact going to be a cumulative result of all of the above. The reality of transnational influences was also a factor in the plans for the future as Houston stressed, “In addition the great complex of international events is driving us at unprecedented speed toward the decision whether to make this country a working democracy or confess failure before the world.”

Houston’s health declined however, and in December of 1949 he was hospitalized. Complicating matters, his wife was hospitalized at the same time, causing him to confront not only his own mortality, but also the future of his family,

680 CHH, "Foul Employment Practice on the Railroads.", Inventory of the Blacks in the Railroad Industry Collection, 1946-1954, Box 1Folder 12 Reel 1; Schomburg Center for Research in Black Culture, New York Public Library.
681 Ibid.
682 Ibid.
683 Ibid.
684 Ibid.
particularly the well being of his son. After his release, Charles continued to work at
the pace of a man bent on changing the world even if tasked his already strained
heart. There was always work in front of him that needed to be done, and he was
pragmatic regarding his own prognosis. After the holidays when his wife and son
went to visit relatives, he made clear that “he wanted his son to remember his father
as vigorous, impressive, and strong.” As the frequency of the chest pains increased
he was admitted to Bethesda Naval Hospital, where he suffered a second heart attack.

Contemplating the message he might leave for his son Houston picked up the
book Peace of Mind, a gift from his Aunt Clotill, and in it he quietly penned a
message. “Tell Bo I did not run out on him but went down fighting that he might
have better and broader opportunities than I had without prejudice or bias operating
against him, and in any fight some fall.” After penning this wrenching message to
be given to his son at some point in the future, Charles Houston recovered well
enough for his doctor to relay to his wife that he was doing better. He was actually
sitting up in bed working when his close friend Joseph Waddy stopped to check on
him, and Houston greeted him with, “Hi, Joe.” With his friend before him and his
vocation at his fingertips, Charles Hamilton Houston spoke his last words before he
lost consciousness and passed away on April 22, 1950.

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685 McNeil, Groundwork, 209.
686 Ibid., 212.
687 Ibid., 211.
688 Ibid.
CHAPTER X

CONCLUSION

Charles Hamilton Houston’s death was observed by family, friends, and the nation as newspapers in the white and black presses printed eulogies and editorialized the significance of Houston’s life. His cousin and law partner, William Hastie, credited Houston with starting the Civil Rights Movement. The Washington Post wrote that “Within the professional lifetime of Charles Hamilton Houston, a profound and significant change took place in the emancipation of American Negroes.”

Houston was a tireless, fearless, and prescient leader, whose selfless conviction to liberate African Americans from the oppression of Jim Crow led to the successful undoing of Plessy, and its many undemocratic incarnations, by 1950. In 1946, near the end of his life, Houston had been discussing what the defeat of yet another anti-lynching bill truly meant. He said, “When we get strong enough to pass it we won’t need it. Acceptance by the majority of judicial decisions on behalf of minorities...has shown the majority is taking its own medicine...That shows our progress is evolutionary rather than revolutionary. We can go as far as we want to because we still have the throttle in our hands.”

Throughout his life, Houston not only controlled the throttle of a brilliant legal strategy aimed at nullifying the world of


Plessy, but he also gave it a profound direction affecting the future of race and labor relations in the United States.

Houston was born into an era described as the “nadir” of African American History, an era that had betrayed the original intent of the Civil War amendments at every level of government. Although Plessy was established as a matter of law, African Americans challenged the system at its most basic level, where they worked, insisting on equal treatment, and taking part in major interracial efforts to achieve economic independence on the way to achieving an equal measure of legal and social equity. When first confronting racism, de jure and de facto, as a young man in the military, Charles Houston viewed the world from perspectives at home and abroad, and determined that when he returned to the U.S. he would make a difference. It goes without saying that he accomplished his goal many times over, to the betterment of the country. He knew the power of the federal, state, and local governments to cheapen, demean, and take the lives of African Americans on a whim to be unacceptable, moving him to conclude that change would have to come from many different realms, and with mass support to move America closer to its ideal.

Significantly, the reason advances could be made concerning race, labor, and the law was due to the Supreme Court’s use of the incorporation doctrine. As a result of *Gitlow v New York* (1925), the 14th Amendment was used as the vehicle by which the Bill of Rights would be implemented into the states. While the Court would incorporate the amendments on a case by case basis, it was understood by lawyers that illiberal behavior in contravention of the first ten amendments could, and would,
be challenged in the Supreme Court. For Charles Houston this rejuvenated 14th Amendment would allow him room to maneuver through the legal minefield surrounding the issues of race and labor. The promise of "no state shall..." and a Constitutional assurance of an effective due process, allowed Houston to attack cases with all of his considerable abilities, with unparalleled success. For these reasons, 1925 serves as the nexus of race labor and the law.

In a 1933 letter to Stephen Early, the assistant secretary to the President of the United States, Houston registered his frustration in a manner affirming his approach to change. Houston wrote, "We protest that the lives and physical protection of American citizens are just as important as any NRA program ever can be; and that the traditional policy of temporizing with injustice and disrespect of law is to a great extent responsible for the moral collapse and selfishness exhibited in so many quarters today. The law and constituted authority are supreme only as they cover the most humble and forgotten citizen."691 Houston strived for an approach to injustice that eluded the singularity of legalism. As spectacular as his record was in the courtroom, he is given less credit than he deserves for working efficiently and diligently from within the U.S. system.

Commenting on the Harris Report, authorized by the NAACP, Charles Houston announced that the NAACP needed to be made more appealing to the man on the street.692 That meant, in part, that leaders like Houston were going to have to

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start working with labor. He had done so early in his career, as far back as 1924, when he represented the wife of a man killed on the job. Charles Houston well understood what labor was going through when early on he sided with the Communists who, though grandstanding on occasion, represented blacks in the south, organizing workers and farmers who were attempting to eke out a living, when other groups would not venture to do the same. Houston also was quick to see what was really at work in the Scottsboro case, identifying the fact that this was about work, and the attempt on the part of the white ruling class to keep blacks from moving toward achieving a degree of economic independence.

As Charles Houston moved to undo the world of Plessy, he took on education cases, understanding that education is the gateway to success in American society. He sagaciously declared that without education, blacks miss out on internships in government, business, the medical field, and many other parts of civic life in a community. He then extended his efforts to the Fair Employment Practice Committee, first informally and then formally, gaining access and influence that reached the office of the President. While his time on the FEPC was frustrating, resulting in his resigning not once, but twice, it ultimately led to success as FDR authorized the committee to have subpoena power. It was true that neither Roosevelt, nor Truman went as far as Houston implored, but he was nonetheless pleased with the establishment of FEPCs at the state level. Houston went on to bolster his career with time on the FEPC, securing court actions, some of which terminated in Supreme Court victories, and pursuing the white primary cases, securing the vote for African
Americans. From there, he continued to argue the second Scottsboro case involving the issue of interracial juries, and then took on housing covenants, which robbed African Americans of the ability to establish the familial wealth that whites had long enjoyed.

There were also the endless speaking engagements for group after group, all of which clamored for his time, wisdom and energy. He took his charismatic speaking ability to the halls of Congress, sitting as both official and unofficial witness over his lifetime, attempting to persuade legislators of the need to pass legislation with teeth to help all Americans work in safety. Toward the end of his career, one of those groups involved the black railroaders who had been excluded from the four major railroad brotherhoods. As we have seen, this may have been Houston’s most impressive legal feat, as he actually created new law, winning in two stunning back-to-back performances before the Supreme Court, within hours of each other, and winning both the Steele and Tunstall cases outlawing discrimination in the railroad brotherhoods.

These victories used New Deal Era laws, particularly the Railway Act of 1938, as the basis for argument against the unconstitutionality of the brotherhood’s discriminatory policies. This scenario contradicts the public policy school, which argues that reform laws in labor, like the Railway Labor Act, hurt African American workers because they allowed organizations like the brotherhoods to discriminate. This logic, however, simply does not hold up under scrutiny. The fact that individuals or organizations violate the intent of the law does not mean that the law is
bad, it means the law has been broken. The problem for African Americans in the workplace had always been an unwillingness on the part of those agencies or individuals charged with enforcement to do their jobs. What Houston was able to do so brilliantly, was assert his agency, and challenge the court to understand the unconstitutional violation of the law.693

Just as Houston had made law for the railroad employee's unions, all of these efforts point to Charles Houston as an innovator when it comes to achieving change for African Americans in the pre-Brown era. He was not constrained by ideology, and worked consistently in three areas over his career, using the courts, the workplace, and politics, helping any individual or group that genuinely sought to further the cause of justice. Houston was not interested in separatism, accommodation, or even to a degree voluntarism (working towards intra-racial efforts).694 He was certainly interested in helping African Americans within the community, but this was merely a part of the overriding vision that Houston fought for with a ferocious single-mindedness; that the American Creed should be wholly extended to African Americans. He would not let stand the injustices of race prejudice, and he dedicated his life to eradicating it so that his son and future generations would know freedom.

In considering the legacy of Charles Houston one is struck by the tremendous reach of his life well beyond Brown v. Board, a point driven home in a speech made

by Dr. Martin Luther King to the Bar Association in August of 1959. Dr. King opened by stating, “Words are inadequate for me to express the deep gratitude that we owe the lawyers of our race for bringing us to this significant point in our struggle. It goes without saying that some of the most momentous achievements in the civil rights struggle have come through the courts. These victories would never have been achieved without the assiduous labors, courageous stands, and brilliant arguments of our dedicated lawyers. Many of you have never received adequate recognition or proper financial returns for you work, but you have continued to give yourselves unstintingly to a cause that you know is right. One day all of America will take pride in your achievements. Long after the names of Governor Faubus and Senator Eastland will be forgotten in shame, the names of Charles Houston, Thurgood Marshall and a host of others will be creatively stenciled on the mental sheets of succeeding generations.”

Reading the speech, one is struck by the intersecting legacies and commonalities between the two men.

Both men grew up in solidly middle class, professional families, Houston with a father who was a respected, successful lawyer in Washington D.C., while King was the son of a minister in one of the most successful AME churches in Atlanta. Each man followed in his father’s footsteps professionally, however, both chose stridently more radical positions regarding civil rights. Their dedication to the cause of justice took them away from their families for extended periods of time, as they attended to

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695 Carson Clayborne, *The Papers of Martin Luther King, Jr. Volume V: Threshold of a New Decade, January 1959-December 1960* (Berkeley: University of California Press, 2005), 264. The speech was given at the Thirty-fourth Annual Convention of the National Bar Association (an organization started Charles Houston and others) and addressed in part the dangers associated with separatism and hate.
the pressing matters before them, causing both men pangs of guilt over time lost with their children and wives.

There is also a recognizable symmetry in the ways both men evolved in their pursuits of greater civil rights. Charles Houston fought segregation the schools, transportation, and the military, worked to secure the vote through the court system, and, at the time of his death, was fighting for the rights of workers to secure safe jobs and a living wage free from the mark of prejudice. Dr. King fought segregation in the schools and in transportation, worked tirelessly for the Voting Rights Act, and at the time of his death was working to secure equal pay for garbage men in Memphis, Tennessee. Dr. King participated in the sit-ins of the 1960's, while Houston, as early as the 1940's, fought for the release of frustrated blacks who were incarcerated for sit-in protests years before they became a recognized form of expression. Houston and King recognized the necessity of mass movements, which culminated in the iconic imagery of the historic march on Washington. Houston worked with A. Philip Randolph and others in the 1940s, leading to the March on Washington Movement that was parlayed into the creation of the FEPC. More than twenty years later, in 1963, Dr. King was there with A. Philip Randolph, having parlayed their efforts into one of, if not the, iconic moments of the civil rights era.

Significant to the intersection of Houston's and Dr. King's legacies was their realization of the centrality of labor and civil rights in the United States. Without a job that would provide a living wage and dignity, there could be no substantive

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advances in the United States because, as both men understood, all too frequently the fundamental tool used to exploit the issue of race in America was jobs. Charles Hamilton Houston and Dr. Martin Luther King each secured his legacy by appealing to the better angels of our natures, while simultaneously fighting with the heart of a lion. Dr. King’s prediction that Houston’s name would be well known remains unfulfilled, as Charles Houston is known only in small circles of professionals involved in parts of the law or education. One can only hope that a greater understanding of the long civil rights movement will end Houston’s relative anonymity and appropriately garner the recognition that Dr. King envisioned. However, we should all remember that Charles Hamilton Houston was there in the beginning of the modern civil rights movement, fighting so the humblest among us might labor in dignity, and reminding all that the fight is not revolutionary, but evolutionary.
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