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State response to the civil right issue, 1883-1885

Robert Lionel Rowe
Portland State University

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[redacted]

Gordon B. Dodds, Chairman

[redacted]

Bernard V. Burke

[redacted]

Jesse L. Gilmore

The purpose of this study is to reexamine the assumption in American historiography that the United States Supreme Court's monumental decision in the Civil Rights Cases striking down the 1875 Civil Rights Act represented the end of the Nineteenth Century commitment to "equality under the law" and the civil rights issue. The evidence shows that while the decision had overwhelming support, much of this was support for the Court's view that such legislation was not within the scope of Federal power.

Eleven states responded to the Supreme Court's

decision by rapidly enacting civil rights legislation. The research centered on gathering data (legislative journals, proposed bills, and newspapers) to examine the depth and nature of this response.

The evidence does seem to suggest that the legacy of "equality under the law" did continue into the 1880's. Also the great degree of partisan behavior displayed by some toward the bills and the caution in defining positions shown by others indicates that politicians were very concerned with the power of the black voter. The black man's rights and the black man's vote were not forgotten by the politicians in the 1880's.

STATE RESPONSE TO THE CIVIL RIGHT ISSUE, 1883-1885

by

ROBERT LIONEL ROWE

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[redacted]

Gordon B. Dodds, Chairman

[redacted]

Bernard V. Burke

[redacted]

Jesse L. Gilmore

APPROVED:

[redacted]

Jesse L. Gilmore, Department of History

[redacted]

David T. Clark, Dean of Graduate Studies and Research

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CHAPTER I

INTRODUCTION

On March 1, 1875, the capstone of the "Radicals" effort to achieve "equality under the law," the Supplementary Civil Rights Act, was signed by President U. S. Grant. The idea of a civil rights law supplementing the 1866 Civil Rights law had long been a wish of the great Massachusetts liberal, Senator Charles Sumner. Sumner, speaking in behalf of such a law, stated that "I know nothing further to be done in the way of legislation for the security of equal rights in this Republic."[1]

The bill, with some variations, had been presented to the Senate five times between May, 1870 and January, 1874. In addition, the bill was introduced several times in the House of Representatives by Sumner's associates. Failing health was the only obstacle in the way of an even more tenacious attack by Sumner. Fear in January, 1874, that his bill would fail in the Judiciary Committee, as it had in the past, caused Sumner unsuccessfully to resist sending the bill to committee. This delay meant that Sumner did not live to see the bill pass the Senate. He died on March 11

[1]U.S., Congress, Congressional Globe, 41st Cong., 2d Sess., 3434, May 13, 1870.

with the bill still in committee.

The bill, as it passed the Senate in 1874, established that all persons within the jurisdiction of the United States were entitled to full and equal enjoyment of certain accommodations, advantages, facilities and privileges. These included inns, public conveyances, theaters and other places of public amusement, public schools and tax supported cemeteries. These provisions were "subject to the conditions and limitations established by law, applicable alike to citizens of every race and color regardless of any previous condition of servitude." All persons who denied any citizen these rights were subject to civil and criminal action. These penalties were a forfeiture of five hundred dollars with costs in an action of debt, and upon conviction for a misdemeanor a five hundred to one thousand dollar fine and/or a prison sentence of thirty days to one year. One very interesting point in the bill was two provisos included at the end of section two.

> Provided, That the party aggrieved shall not recover more than one penalty and when the offense is a refusal of burial, the penalty may be recovered by the heirs at law of the person whose body was refused burial: And further provided, That all persons may elect to sue for the penalty aforesaid or to proceed under their rights at common law and by State statute: and having so elected to proceed in the one mode or the other, their right to proceed in the other jurisdiction shall be barred. But this proviso shall not apply to criminal proceedings,

either under this act or the criminal law of any State.[2]

The first proviso is rather confusing in that it could be interpreted as contradicting the bill's earlier reference to both civil and criminal penalties being imposed. This confusion can be resolved by examining the amnesty and civil rights debate of 1872. Senator Frederick Frelinghuysen of New Jersey, in attempting to clarify Senator Sumner's bill offered a suggestion to the section which read

> That any person violating the foregoing provision, or aiding in its violation, or inciting thereto shall, for every such offense, forfeit, and pay the sum of $500 to the person aggrieved thereby.[3]

Frelinghuysen stated:

> If a whole congregation or all the passengers of a steamboat car violate some of the provisions of the foregoing section everyone so aiding in or inciting to such violation should not be liable to and the party aggrieved be entitled to from each one a penalty of $500. I suggest . . . the following amendment:
> Provided, That the party aggrieved shall not recover more than one penalty. . . .[4]

Sumner accepted this amendment and he incorporated it into his future civil rights bills.

The Senate bill also included a provision which barred the use of race, color or previous condition of servitude as

[2]U.S. Congress, Congressional Record, 43rd Cong., 1st Sess., 3451, April 29, 1874.

[3]Cong. Record, 42d Cong., 2d Sess., 435, January 17, 1872.

[4]Ibid.

a qualifying factor in jury selection and fined any violator up to five thousand dollars.

This bill passed the Senate in 1874 and was sent to the House of Representatives where it remained stuck in committee until the end of the session.

The Republican party had suffered a setback in the 1874 congressional elections, which may have been partially attributable to that party's position on civil rights.[5] Many of the congressmen advocating passage of the civil rights bill, including the bill's House sponsor Benjamin Butler of Massachusetts, were "lame-duck" congressmen. Representative Butler, after a great deal of parliamentary manuevering, presented the committee version of the bill. It deleted the references to public schools and cemeteries. It also altered the provisos at the end of section two. The altered provisos stated:

> Provided, That all persons may elect to sue for the penalty aforesaid or proceed under their rights at common law and by State statutes; and having so elected to proceed in the one mode or the other, their right to proceed in the other jurisdiction shall be barred. But this proviso shall not apply to criminal proceeding, either under this act or the criminal law of any State: And provided further, That a judgment for the penalty in favor of the party aggrieved, or a judgment upon an indictment, shall be a bar to either prosecution respectively.[6]

[5] New York Times, November 4, 1874.

[6] An Act to Protect All Citizens in Their Civil and Legal Rights, Statutes at Large, 18, ch. 114, 335 (1875).

The difference is that while the Senate bill stated "/that/ the party aggrieved shall not recover more than one penalty" the House bill stated "/that/ a judgment for the penalty in favor of the party aggrieved, or a judgment upon an indictment, shall be a bar to either prosecution respectively." The difference between the House and Senate provisos is significant. The House proviso seriously weakened the punitive section of the bill. It restricted the relief that the aggrieved could obtain and forced the aggrieved to choose whether he wanted to follow the civil or criminal approach. If the choice was civil, he must then choose a jurisdiction, federal (under the Civil Rights Act) or state (under state statute or common law). If the aggrieved won his suit he was barred from any further relief and if the person chose a criminal action (state, federal or both) he is barred from a civil action. The penal changes in the bill therefore are softened as were the other changes in the bill (i.e. deletion of reference to schools and cemeteries) to make it more acceptable to the majority. The bill in this somewhat "watered down" form passed both houses of Congress.

The Senate and House's lack of discussion on the penalties that the bill imposed was probably due to their concentration on the other questions about the bill which they considered more important. The inclusion of public schools in the 1874 Senate bill was the object of strong

opposition (including that of Republicans such as William Stewart of Nevada and Aaron Sargent of California). It was maintained that this would destroy the common school systems. When schools were withdrawn from the bill by the House, the Senate then argued the wisdom of the "jury section." The opponents argued once again that participation on juries had nothing to do with equality of justice, using the exclusion of women and children to illustrate their point.

The central issue, however, in all the debates on the bill concerned its constitutionality. The Republicans maintained that Congress had the right to legislate against discriminatory practices by individuals. They based this assertion upon the fifth section of the Fourteenth Amendment which states that "the Congress shall have power to enforce, by appropriate legislation, the provisions of this article."[7] The Democratic position stated by Senator Allen Thurman of Ohio was that this clause added nothing to the power Congress already held.[8] Several Senators challenged Thurman's view that Congress' power was restricted to prohibitions against state action. Probably the clearest statement was presented by Matt Carpenter of Wisconsin:

[7]U.S., Constitution, Amendment XIV, sec. 5.

[8]Cong. Record, 43rd Cong., 1st Sess., 4084, May 20, 1874.

> Was this clause put in here merely to tie down a State by act of Congress or statute which was already tied down by the Constitution itself; or was it put there to carry out the substantial end to act affirmatively . . . ?[9]

He and other Republicans saw it as a positive grant of power.

The Democrats maintained that the Fourteenth Amendment only prohibited discriminatory state action and was no bar to discriminatory individual action. They also argued that there was a clear difference between the rights of United States citizenship and the rights of state citizenship. The Fourteenth Amendment only stated that "no State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States."[10] Fundamental rights such as civil rights were privileges of state citizenship. They cited the Slaughter House Cases as their authority for this assertion.

The Republicans responded to the Democrats constitutional argument. Senator Frelinghuysen's remarks were probably the most important since he was the bill's manager. He stated that the bill was constitutional "under the Thirteenth, Fourteenth and Fifteenth Amendments considered together and in connection with the contemporary history," specifically the "privileges and immunities" and "equal

[9]Ibid., 4085.

[10]U.S., Constitution, Amendment XIV, sec. 1.

protection" clauses and "under the general power given Congress to enforce the provisions with appropriate legislation."[11] Frelinghuysen also cited the Slaughter House Cases to support his case. There is a difference between citizenship of the United States and state citizenship, Frelinghuysen admitted, but he insisted that "they [the Supreme Court] hold that freedom from [racial] discrimination is one of the rights of United States citizenship."[12]

An examination of the Slaughter House Cases show that both sides were right to a certain extent. Justice Samuel Miller cited Justice Bushrod Washington's opinion in Corfield v. Coryell as his precedent.[13] It stated that the privileges and immunities of state citizenship included those rights which are fundamental to citizens of all free governments which was the Democrats' position. Miller however then went on to suggest what constituted the privileges and immunities of United States citizenship. These included the rights secured by the Thirteenth and Fifteenth Amendments, and the other clauses of the Fourteenth Amendment (i.e. "nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of

[11] U.S., Congress, Cong. Record, 43rd Cong., 1st Sess., 3451, April 29, 1874.

[12] Ibid.

[13] Corfield v. Coryell; 4 Wash. C.C. 371 (1823).

its laws").[14] This constituted the portion of the opinion which the Republicans used to justify the constitutionality of the bill.

Though the Republicans maintained that the Congress had the power to punish individual acts, they also believed that the prospective law was directed at discriminatory state action. The bill referred to "any person" who violated the provisions, but the bill's supporters made frequent references to discriminatory state laws. Frelinghuysen stated in his introduction that "/the injured party/ could have relief against the party who, under color of such /state/ law is guilty of infringing his rights."[15] Timothy Howe of Wisconsin added that the people meant for Congress to have the power to "snatch from the oppression of unequal laws every colored citizen of the United States."[16] Oliver Morton of Indiana concurred:

> We cannot arrest or punish a State for the violation of this amendment /the Fourteenth Amendment/, but we can punish any person who undertakes to violate the amendment under the cover of a State law.[17]

These "state laws" were never specified. Numerous references were however made to the public nature of these

[14]Slaughter House Cases, 16 Wall. (U.S.) 36 (1873).

[15]Cong. Record, 43rd Cong., 1st Sess., 3454, April 29, 1874.

[16]Ibid., 4147, May 2, 1874.

[17]Ibid., 358 Appendix, May 21, 1874.

accommodations. These private properties were devoted to public interest and were regulated by the states in the form of licenses and taxes. This state regulation was apparently construed broadly to mean state act (i.e. state law).

With this much discussion as to the laws constitutionality in the Senate and House it was almost a certainty that the law would be tested in the courts. On October 15, 1883 the Supreme Court ruled the first two sections of the Act unconstitutional (leaving however the jury section unaffected). Justice Joseph Bradley, speaking for the Court in this eight to one decision, used many of the arguments used by the Democrats in 1874 and 1875. Bradley rejected the view that such legislation was possible under the Thirteenth and Fourteenth Amendments.

> It is State action of a particular character that is prohibited /by the Fourteenth Amendment/. Individual invasion of individual rights is not the subject matter of the amendment. . . . It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws and the action of State officers, executive or judicial, when these are subversive of the fundamental rights specified in the amendment.[18]

Bradley went on to state that Congress may adopt corrective legislation

> for counteracting such laws as the States may adopt or enforce, and which, by the amendment, they are prohibited from making or enforcing. . . . It is not

[18]Civil Rights Cases, 3 S.Ct. 21 (1883).

> necessary for us to state, if we could, what legislation would be proper for Congress to adopt.[19]

Justice John Harlan in his famous lone dissent to the opinion offered many of the same arguments as the Republicans in Congress in 1875. Harlan maintained that the Fourteenth Amendment did not consist wholly of prohibitions upon the States. Congress was granted under the Fourteenth Amendment a positive power to enforce all the provisions of the articles of the amendment.[20] Harlan cited the Supreme Court's decision in Munn v. Illinois to maintain that the "public interest doctrine" was also applicable in the Civil Rights Cases.

> The doctrines of Munn v. Illinois have never been modified by this court, and I am justified, upon the authority of that case, in saying that places of public amusement /and inns and common carriers/, conducted under the authority of the law, are clothed with a public interest, because used in a manner to make them of public consequence and to affect the community at large.[21]

The Congressional Act, in Harlan's opinion, was also justified by the Thirteenth Amendment:

> /Such/ discrimination is a badge of servitude, the imposition of which Congress may prevent under its power, through appropriate legislation, to enforce the thirteenth amendment. . . .[22]

Though Harlan's dissent today is considered one of the

[19]Ibid., 23.

[20]Ibid., 47.

[21]Ibid., 44.

[22]Ibid.

great opinions in American Constitutional Law, in 1883 it was the majority opinion which received most of the attention. The Supreme Court's decision was received calmly by the American press in general. Though many Republican papers thought the decision was unfortunate, they and most other papers supported the Court's decision. The New York Evening Post observed that the calm with which the decision was received showed how the passions of the war had died down. It continued by stating that the fact the Fourteenth Amendment was only a prohibition upon States was evident to "every candid-minded man."[23] The New York Times maintained that the decision would have little practical effect. The question of discrimination could only be resolved by the sentiments of the community. While the decision established that any such "civil rights law" could only be the subject of State legislation, the Times doubted the wisdom of this kind of legislation.[24]

While the white press was little concerned with the decision, the black press and community were very concerned. T. Thomas Fortune, the fiery young editor of the New York Globe stated:

> The colored people of the United States feel today as if they had been baptized in ice water. From Maine to Florida they are earnestly discussing the decision of the Supreme Court declaring the Civil

[23] New York Evening Post, October 16, 1883.

[24] New York Times, October 16, 1883.

> Rights law to be unconstitutional. Public meetings are being projected far and wide to give expression to the common feeling of disappointment and apprehension for the future.[25]

Fortune continued by warning that "the Republican party has carried the war into Africa, and Africa is accordingly stirred to its centre."[26]

From Washington came denunciations from such nationally prominent black Republicans as Frederick Douglass, John Mercer Langston and Blanche Bruce. The Negro Republican paper, the Cleveland Gazette, accused the Court of "toadying to the South in establishing the Calhoun theory of States' Rights. . . ."[27]; it added that the decision "by a Republican Supreme Court does not help the Republican party for '84."[28] A contributor to the paper, John P. Greene, who was a black leader in Ohio Republican politics stated that "I [Greene] sadly fear that the men who are in control of the Republican party at Washington are just now sacrificing principal [sic] to machine politics."[29] Even the strongly Republican Washington Bee, while maintaining that the Republican party was not responsible for the decision, later stated that the Republicans "winked at the

[25] New York Globe, October 20, 1883.

[26] Ibid.

[27] Cleveland Gazette, October 20, 1883.

[28] Ibid.

[29] Ibid.

Civil Rights Bill."[30] The Bee apparently meant that the Republican party had never given the bill the type of support to make it a significant piece of legislation.

The Civil Rights Cases decision was not the only reason or even the principle reason for black dissatisfaction with the Republican party. Black grievances had been mounting since Hayes' withdrawal of federal troops from the South in 1877. Lack of protection of the lives and ballots of Southern Negroes and the failure to reward competent black men with patronage were the main sources of irritation. The black press almost always coupled criticism of the Civil Rights Cases decision with criticism of the failure to protect black political rights in the South. For example Fortune's "baptism in ice water" editorial cited above, which was in the first edition after the announcement of the decision, also refers to the Supreme Court decision a few months earlier declaring the "Ku Klux Klan law" unconstitutional /United States v. Harris/. "Having declared that colored men have no protection from the government in their political rights, the Supreme Court now declares that we have no civil rights. . . ."[31]

All the black grievances combined to form a platform on which several black leaders called for independent

[30] Washington Bee, December 8, 1883.

[31] New York Globe, October 20, 1883.

political action by blacks. The degree to which the black voters supported this movement is difficult to measure. T. Thomas Fortune and W. Calvin Chase, editor of the Washington Bee, argued the point in the New York Times during August of 1883. Chase maintained that only two black papers (the Savannah Echo and the New York Globe) out of one hundred and twenty supported the independent movement.[32]

> Mr. Fortune of the Globe, is an able writer, but his influence is limited to his readers. . . . [The] negro has not weakened and will not weaken in his alliance to the Republican party.[33]

Fortune countered in a later issue, accusing Chase of being "a violent partisan and chronic office seeker."[34] This accusation by Fortune seems to be justified by the evidence. Chase was a clerk in the War Department and his paper's choice for President prior to the national convention was Robert Lincoln, Secretary of War. Also, Chase had been a very strong Republican partisan until the election returns showed that Democrat Grover Cleveland had won the presidency. In the next issue Chase announced his strong support for Cleveland.[35] This evidence would seem to throw a shadow over Chase's independence of judgment.

[32] New York Times, August 12, 1883.

[33] Ibid.

[34] Ibid., August 14, 1883.

[35] Washington Bee, November 22, 1884.

Fortune offered evidence to support his contention that Negro political independence was growing. Countering Chase's assertion of the black presses' support for the Republican party, Fortune stated that the Colored Press Association, meeting in St. Louis earlier in 1883, passed a strong resolution of non-partisanship.[36] The movement of the "National Colored Convention" from Washington, where it would supposedly be controlled by Republican partisans, to Louisville was seen as a victory for the independents.[37]

The "National Colored Convention" of September, 1883 (held prior to the decision in the Civil Rights Cases) generally maintained a non-partisan posture. The Convention strongly opposed a resolution of support for President Arthur.[38] Also a resolution endorsing the Republican party met with a "storm of protests."[39] Frederick Douglass was named Chairman of the Convention. Douglass, who was characterized by Fortune as a "hopeless case of partisanship," made a strongly independent address to the Convention.[40]

> Our business is to organize for our rights and for the redress of our wrongs. . . . If the Republican party cannot stand a demand for justice and fair

[36] New York Times, August 14, 1883.

[37] Ibid.

[38] Ibid., September 27, 1883.

[39] Ibid.

[40] Ibid., August 14, 1883.

it ought to go down.[41]

When the press carried stories of Douglass' new independence, Douglass attempted to back down from his speech. "I am independent within the Republican party. . . . Tell your party your wants, hold the party up to its professions, but do your utmost to keep it in power. . . ."[42] Though Douglass was vacillating, he does show the degree of uncertainty with which the Negroes viewed the Republican party.

Another strong advocate of independent Negro politics was George T. Downing, a "black mugwump." Downing had the good fortune to be born free, into a comfortable family that could provide him with a good education, but no one could accuse him of failing to be concerned with his fellow blacks. He was an active abolitionist, particularly in the underground railroad and in the efforts to oppose the Fugitive Slave Law. He was also the man holding the hand of Charles Sumner at his death.[43] This man, however, believed that the Negroes should now reconsider the policies of the Democratic party to see if they might not be more receptive to the black interests than the Republicans. The black men according to Downing should not be tied to past loyalties, but should act independently to advance their own self

[41]Ibid., September 26, 1883.

[42]"Douglass to Dalzell Letter," Wheeling Inquirer, quoted in Lansing Republican, October 17, 1883.

[43]New York Freeman, March 7, 1885.

interest.

> The colored man need not hope to have his rights respected solely because they should be respected, policy will greatly control; independence, manliness and aggressiveness on his part are needful agencies. He who is dreaded will be cared for; he who is free will be sought.[44]

The Negro "independence movement" fell short in 1884 and apparently the Republican party carried the bulk of the Negro votes. Though Negroes were disappointed in the Republicans' policy, they still believed that the party represented their best hope. Fortune maintained that "our faith in the Republican party hangs upon the frailest thread."[45] There was still however this thread of hope and Fortune too stood for the Republican ticket of James G. Blaine and John A. Logan in November. While the blacks remained basically in the Republican column, the relationship was becoming noticably shaky.

The idea that the black man was the "balance of power" politically in America was a widely held belief in the black community. An examination of the statistical data from the 1880 Census would seem to at least superficially substantiate this assertion. The black vote was apparently very important in Connecticut, Indiana, New Jersey and New York. Also these votes could have had important consequences in

[44] New York Globe, February 9, 1884.

[45] Ibid., October 20, 1883.

Illinois, Ohio and Pennsylvania.[46] These states which were the ones used by the black leaders, were misleading however because they imply that all adult black men were voters. Since not all whites were voters it does not seem logical that all blacks would be. Also various legal and illegal tactics to restrict the black vote could still have been in use in the North. These statistics also do not take into account variations from state to state of political involvement. In some states blacks may not have had the leadership or organization to make their potential power a reality.

There is evidence that some Republicans intended to make civil rights a campaign issue in 1884. The Cincinnati Commercial Gazette and the Chicago Tribune brought out this point, seeing the thrust to be in the direction of an amendment to the Constitution.[47] The Commercial Gazette went on to state the following:

> Some Republicans regret the /Civil Rights Cases/ decision . . . others are pleased with the decision for the reason that, as they put it, it will infuse new life into politics; will awaken some old enthusiasm, will make the Republican party once more the party of moral ideas; will arouse sentiments, and if in a lesser degree, will revive the spirit of the old anti-slavery movement.[48]

[46]U.S., Bureau of the Census, Tenth Census of the United States, 1880, 1: Table XX, xxxvii.

[47]Chicago Tribune, October 17, 1883; Cincinnati Commercial Gazette, October 17, 1883.

[48]Cincinnati Commercial Gazette, October 17, 1883.

Neither major party, however, made very specific commitments to civil rights in their national platforms in 1884. The Republicans stated that their party had

> . . . after saving the Union, done so much to render its [the nation's] institutions just, equal and beneficent, the safeguard of liberty and the embodiment of the best thought and highest purpose of our citizens.[49]

The Democratic platform emphasized the empty promises of the Republicans in the past and stated that

> . . . we hold that it is the duty of the government in its dealing with the people to mete out equal and exact justice to all citizens of whatever nativity, race, color or persuasion religious or political.[50]

Aside from the very unlikely prospects that the Court would overrule its 1883 decision, there were three ways of possibly insuring the protection of those civil rights which had been designated in the 1875 Supplemental Civil Rights Act. These were a more strenuous use of the common law remedy, a constitutional amendment or state legislation.

The path advocated by most conservatives was the common law remedy. This common law remedy applied to accommodations in common carriers and inns or hotels. "By the common law, innskeepers and common carriers are bound to furnish equal facilities to all without discrimination

[49]Thomas H. McKee, ed., The National Conventions and Platforms of All Political Parties, 1789 to 1900, 3rd ed. (Baltimore: Friedenwald Co., 1900), p. 210.

[50]Ibid., p. 204.

because public policy requires them to do so."[51] Bouvier's Institutes of American Law stated that

> /common carriers/ are obliged to carry all passengers who may offer themselves, if they have sufficient accommodation. But they may exclude all improper persons, or persons who refuse to comply with reasonable regulations . . .[52]

Innskeepers were also required to provide equal accommodations, reserving the right to make reasonable regulations.[53] The Supreme Court in the Civil Rights Cases stated:

> Innskeepers and public carriers, by the /common/ laws of all states, so far as we are aware, are bound, to the extent of their facilities, to furnish proper accommodation to all unobjectionable persons who in good faith apply for them.[54]

Justice Harlan in his dissent to the decision in the Civil Rights Cases emphasized this point with three citations. He first quoted Redfield on Carriers as saying an innkeeper "must keep a house of entertainment or lodging for all travelers or wayfarers who might choose to accept the same, being of good character or conduct."[55] Harlan cited Justice Story (Story on Bailments) as stating:

[51]People v. King, 100 N.Y. 418 (1888).

[52]John Bouvier, Institutes of American Law, 2nd ed. (Philadelphia: J. P. Lippincott Co., 1882), I, 256.

[53]William Mack, ed. Corpus Juris (New York: American Law Book Co., 1914), XXXII, 543.

[54]Civil Rights Cases, 3 S. Ct. 31 (1883).

[55]Ibid., 42.

> An innkeeper is bound to take in all travelers and wayfaring persons, and to entertain them. . . . If an innkeeper improperly refuses to receive or provide for a guest, he is liable to be indicted therefor. . . . They (carriers of passengers) are no more at liberty to refuse a passenger, if they have sufficient room and accommodations, than an innkeeper is to refuse suitable room and accommodations to a guest.[56]

Harlan then cited Justice Coleridge in the English Common Law case of Rex v. Ivens.

> The innkeeper is not to select his guests. He has no right to say to one, you shall come to my inn, and to another you shall not, as every one coming and conducting himself in a proper manner has a right to be received; and for this purpose innskeepers are a sort of public servants, they having in return a kind of privilege of entertaining travelers and supplying them with what they want.[57]

The remedy in cases involving both common carriers and inns was an action for damages.[58] The type of damages that could be sought were not fixed by common law. In terms of inns or hotels it is stated in Corpus Juris that:

> Some courts hold that a guest wrongfully ejected from a hotel may recover damages for injury to his feelings as a result of humiliation but other courts hold that there can be no recovery for mental anguish resulting from the humiliation.[59]

A similar situation developed in regard to common carriers, some courts allowed for exemplary damages or damages awarded

[56] Ibid., 43.

[57] Ibid.

[58] Corpus Juris, X, 647.

[59] Corpus Juris, XXXII, 544.

beyond the actual damages to punish and make an example of evil behavior and solace the plaintiff for mental anguish, while others did not.[60] Clearly the common law remedy did not always offer the aggrieved much relief.

The passage of a constitutional amendment was the most desirable approach for the blacks. The Cleveland Gazette asserted that state civil rights laws would only be a partial solution because they could not be passed in the South where there was the greatest need for them.[61] The adoption of a constitutional amendment, however, received no strong support from the White House. President Chester Arthur maintained that he would follow Congress and give his "unhesitating approval" to any constitutional guarantee of civil rights.[62] There was a Republican initiative in Congress. Senator James Wilson of Iowa introduced a joint resolution proposing an amendment to the Constitution on the second day of the session following the Supreme Court's decision. The proposed amendment stated as follows:

> Congress shall have power, by appropriate legislation, to protect citizens of the United States in the exercise and enjoyment of their rights, privileges, and immunities, and assure to them the equal

[60] Chicago, etc. Railroad v. Williams, 55 Ill. 185 (1870); West Chester Railroad v. Miles, 55 Pa. 209 (1867); Goines v. McCandless, 4 Phila. 255 (1861).

[61] Cleveland Gazette, October 20, 1883.

[62] J. D. Richardson, ed., Compilation of the Messages and Papers of the Presidents, 1789-1897 (Washington D.C.: Government Printing Office, 1898), VIII, 188.

protection of the laws.[63]

Representatives William Brown of Pennsylvania, William Calkins of Indiana, J. Warren Keifer of Ohio, Edmund Mackey of South Carolina and James O'Hara of North Carolina also proposed amendments.[64] In addition, Senator George Edmunds of Vermont introduced a new limited civil rights bill in the Senate and two bills by Thomas Ryan of Kansas and Brown were introduced in the House.[65] All amendments and bills, however, had a quiet death in the respective Judiciary Committees. The defeat of the House measures could be expected since the Democrats controlled the committee nine to six, but the Senate committee had a six to five Republican majority. The defeat then could not be totally blamed on the unregenerated Democracy.

The other answer to the civil rights problem was state legislation. Though the press gave this answer a position of importance behind the other solutions, it was discussed. Probably the most interesting comment was made by the New York Globe. Under the title "chance for Democrats to make

[63]U.S., Congress, Cong. Record, 47th Cong., 2d Sess., 133, December 12, 1883.

[64]Brown in Ibid., 288, January 8, 1884; Calkins in Ibid., 68, December 10, 1883; Keifer in Ibid., 107, December 11, 1883; Mackey in Ibid., 113, December 11, 1883; O'Hara in Ibid., 282, January 8, 1884.

[65]Edmunds in Ibid., 311, December 4, 1883; Ryan in Ibid., 249, January 7, 1884; Brown in Ibid., 288, January 8, 1884.

gains - why wait for Congress," the Globe made the following statement:

> The Supreme Court has simply decided that the right of protecting their citizens within their own borders is one of the rights which States reserved to themselves, and that consequently the constitution confers no authority upon Congress to legislate on this subject. This is good Democratic doctrine. . . . Let the Democrats show their devotion to the negro by promptly passing the necessary legislation.[66]

The Democrats had based their opposition to the civil rights bill on the grounds that it was an area for state legislation. The Globe's position was that if the Democrats were sincere in their belief that civil rights were state matters they should now support such legislation on a state level or be willing to give sound reasons for further opposition.

The southern states, where the Negro voters were still a significant factor, did not respond to the civil rights decision with state legislation, but in the North there was a significant response. Four states passed laws in 1884 and seven more in 1885 (six of these had no sessions in 1884) to join the three northern states (Kansas, Massachusetts, and New York) which already had state civil rights laws.

The remainder of this study will be dedicated to an examination of these eleven laws. The bills, the legislative debates and newspaper reaction will be studied in an attempt to understand the motivations for these laws. The

[66] New York Globe, October 27, 1883.

eleven states' action will also, hopefully, shed some light on two larger questions. Did the legacy of "equality under the law" which marked the Reconstruction Era continue into the 1880's to any significant degree? Secondly, what influence did black political power have on American politics in the 1880's?

CHAPTER II

THE DEMOCRATIC RESPONSE IN TWO DEMOCRAT CONTROLLED STATES

OHIO

The first and probably the most interesting state civil right law passed after the Supreme Court's decision was that of Ohio (1884). The black vote was important in Ohio. There were over twenty one thousand black adult males in Ohio. The black voting power was not only emphasized by the black press, but by the astute Republican politician, Joseph B. Foraker. Foraker, late in his career, wrote in his autobiography that "/the/ negro vote was so large that it was not only an important but an essential factor in our consideration /of all issues/."[1]

Ohio had been won by the Democratic party in 1883. The failure of blacks to give the Republican party its overwhelming support could have aided in the Democratic victory. George Hoadly, former Free-Soiler and law-partner of Salmon P. Chase, was the successful candidate of the Democratic party for governor. Hoadly was a man "noted for his friendship for the colored race."[2] The Republican choice was

[1]Joseph B. Foraker, Notes of A Busy Life (Cincinnati: Stewart and Kidd Co., 1916), I, 177.

[2]Ibid., p. 176.

Joseph B. Foraker. Foraker was attacked as being an enemy of the black people. This unpopularity was apparently based on two alleged incidents in his past. First, he left Ohio Wesleyan University after a black man had been admitted; and secondly, he had served as attorney for an old friend, a school superintendent, charged with a violation of the Civil Rights Act. The New York Globe had much to say about Judge Foraker. "Foraker is very objectionable to colored voters. His course in the civil rights suit at Springfield is the ground for this objection. For the small sum of 2,000 dollars he sold us out."[3] Later the Globe stated:

> When the Republicans placed Judge Foraker in nomination two years ago they knew full well that he was distasteful to the colored voters of Ohio, but they though they could treat that vote with contempt.[4]

The Cleveland Gazette charged that "Foraker was scratched like everything by the colored coters throughout the State. His position on all his civil rights cases caused the scratching."[5]

In his autobiography, Foraker refuted both charges. He denied the first charge as completely fallacious and maintained on the second that he was just doing his duty as

[3]New York Globe, June 13, 1885.

[4]Ibid., June 27, 1885.

[5]Cleveland Gazette, October 20, 1883.

an attorney.[6] Whether true or not any possible damage was already done.

It is impossible to determine the extent of the Negro defection, but the "Foraker issue" when combined with the general nation-wide Negro dissatisfaction (i.e. lack of patronage and lack of protection for political and civil rights) would seem to justify the assertion that the Republican hold on the black man's confidence and vote was slipping. At this same time came the decision of the Supreme Court in the Civil Rights Cases, which further weakened the Republican position.[7]

The decision caused much discussion in the Ohio black community. As previously mentioned the Cleveland Gazette was bitter in its denunciation of the "Republican Supreme Court." It maintained the decision would have a very harmful impact in the North as well as in the South and it demanded protection of civil rights.[8] Peter H. Clark of the Afro-American, a Democratic Negro newspaper, voiced support for the decision maintaining "that the question is practically settled by common law. Clark, however, called a meeting on October 22, 1883 in Cincinnati which was attended by about four hundred people to consider the decision.

[6]Foraker, Notes, pp. 176-178.

[7]Cleveland Gazette, October 20, 1883.

[8]Ibid.

Little action was apparently taken. A resolution was proposed by Clark declaring confidence in the Constitution and the laws of the country and the sense of justice of Americans.[9] It was not clear, however, from the press if this resolution was adopted or rejected. Clark also read the New York Civil Rights Act and suggested that "it might be well for the colored people of this State to memoralize the legislature and see that such a law was enacted in Ohio."[10] In addition to this Cincinnati meeting other protest meetings were held in Columbus, Cleveland and Youngstown.[11] Though there was some division among black Ohioans over the Supreme Court's decision, there was general agreement that civil rights needed some additional protection.

The Civil Rights Cases' generated a great deal of comment of a partisan nature in the white press. The Democratic position as represented by the Cleveland Plain Dealer and the Cincinnati Enquirer was to strongly support the decision and oppose, in general, all civil rights legislation but still try to use the decision to separate the black vote from the Republican party. The Cleveland Plain Dealer, though it confused the 1875 Supplementary Civil Rights Act with the 1866 Act, did an excellent job of supporting the Supreme Court's decision and also maintaining

[9]Cincinnati Commercial Gazette, October 23, 1883.

[10]Ibid.

[11]Cleveland Gazette, October 27, 1883.

their alleged concern for the civil rights of blacks.

> The decision is more against the Republican party than it is against the colored race. It is that the Republicans violated the Constitution of the United States in a piece of legislation relating to that race. There are ways in which the rights of the colored people could be secured within constitutional limitations, but the imperious Republican party considered itself absolved from all irksome obligations of that kind. If those rights are left in any way insecure all that is to be done is for the states to enact laws agreeable to the spirit of the discredited law.[12]

The Plain Dealer later however asserted that it did not believe that there was a need for a civil rights law in Ohio.[13] The Cincinnati Enquirer strongly indorsed the Supreme Court's decision and was very harsh in its opinion of civil rights legislation.

> /The/ unconstitutionality and absurdity of the legislation of Congress on the delicate question was demonstrated so clearly that /people/ will now wonder how such a law could have been placed on the statute books.[14]

The paper also opposed State action to enact a law similar to the "silly and wicked" Federal law. Any such legislation would be contrary to the "immutable laws of nature."[15] It was apparently this paper's position that the "laws of nature" forbad white people to come in contact with the "inferior race." The Enquirer also, however, attempted to

[12] Cleveland Plain Dealer, October 18, 1883.

[13] Ibid., October 20, 1883.

[14] Cincinnati Enquirer, October 16, 1883.

[15] Ibid.

show the Republican party's disrespect for the Negro.

> A Republican Supreme Court says that a colored man isn't good enough to eat at the first table, or occupy a first class seat in a railroad car or theater, although he pays for it. Still the colored man will be expected to vote the Republican ticket. But will he?[16]

The Republican newspapers answered the Democrats in kind. The Canton Repository denounced the Enquirer for its comments, stating that the Supreme Court had ruled the law only "technically unconstitutional" and that the Republican press and party had not indorsed the decision. The Republican party had not deserted the Negro nor had the Negro lost any rights.[17] The paper then jabbed the Democrats.

> But here is a chance for the Democratic party to distinguish itself. If it considers the happiness of the colored man impaired by the lack of a Civil Rights Act, let its legislature enact one for the State of Ohio which will stand the test. Will they do it?[18]

The Cincinnati Commercial Gazette, the Akron Beacon Journal and the Ohio State Journal echoed the sentiment that if the Democrats were really concerned for the blacks they should pass the needed legislation.[19] The Ohio State Journal emphasized the Democrats past record such as supporting the Dred Scott decision and maintained that Democratic concern

[16] Ibid., October 17, 1883.

[17] Canton Repository, October 19, 1883.

[18] Ibid.

[19] Cincinnati Commercial Gazette, October 17, 1883; Akron Beacon Journal, October 19, 1883; Ohio State Journal, October 17, 1883.

over the consequences of the Civil Rights Cases was insincere.[20] The Journal even suggested that the Democrats were pleased with the Court's decision.

> The overthrow of the civil rights act comes along in good season to help exhilarate the jollifying Democracy. Nothing rejuvenates an old moss-back like the assurance that he can wallop a "nigger" if he wants to.[21]

The white Republican press' position generally on the decision was that it was unfortunate. The Cincinnati Commercial Gazette stated that

> . . . it can not be regarded other than unfortunate that the Court has taken this view of the law, since it reopens a contention in which prejudice and passions, which were rapidly disappearing, will again play a conspicuous, if not dangerous part.[22]

The Canton Repository said virtually the same thing the following day.[23] The Ohio State Journal and the Akron Beacon Journal also expressed disappointment.[24]

The papers however maintained that the Civil Rights Act had proved to be of little real value. They suggested that equal rights were now accepted by the general public. The Cincinnati Commercial Gazette stated that the "decision was not unexpected."[25]

[20]Ohio State Journal, October 18, 1883.

[21]Ibid., October 17, 1883.

[22]Cincinnati Commercial Gazette, October 16, 1883.

[23]Canton Repository, October 18, 1883.

[24]Ohio State Journal, October 18, 1883. Akron Beacon Journal, October 18, 1883.

[25]Cincinnati Commercial Gazette, October 16, 1883.

> There had been so much doubt as to the ultimate decision on the constitutionality of the act that there has been no disposition on the part of colored men to enforce the law, except against one or two restaurant keepers.[26]

It emphasized as did the Canton Repository and the Dayton Journal that the nullification of the law did not effect any legal rights.[27] "The Civil Rights Bill merely provided for the enforcement of penalties for rights already existing under common law."[28] The Dayton Journal added that the black is deprived of nothing but the right to summarily and criminally proceed which was granted under the Civil Rights Act.[29] The civil remedy at common law was unaffected by the decision.

Apparently civil rights had never been much of an issue in the courts of Ohio. A perusal of available State and federal cases show few that involved the question of civil rights. In a 1859 case, State v. Kimber, the Ohio Supreme Court upheld the common law rule that a conductor had no right to eject a Negro passenger from a street car because of her color if she did not refuse to pay.[30] In a

[26]Ibid.

[27]Cincinnati Commercial Gazette, October 17, 1883; Canton Repository, October 19, 1883; Dayton Journal, October 18, 1883.

[28]Cincinnati Commercial Gazette, October 17, 1883.

[29]Dayton Journal, October 18, 1883.

[30]State v. Kimber, 3 Ohio D. 197 (1859).

1882 federal case, Gray v. Cincinnati Southern Railroad, damages were received because of the failure to provide equal accommodations.[31] It was declared in two school cases, State v. McCann (1871) and State v. Cincinnati Board of Education (1873) that the privileges and immunities of the Fourteenth Amendment did not prevent sending black children out of their district to separate schools or forcing children to walk four miles, passing white schools, to a black school.[32] In a federal case, United States v. Buntin (1882), it was ruled that if the black school was unreasonably remote the schools were unequal and in conflict with the Fourteenth Amendment.[33] This was the extent of the cases.

The Cincinnati Commercial Gazette offered the statement by United States Attorney Canning Richards, which contradicts the above information, that only one case, and that resulting in an acquittal, was tried under the Civil Rights Act. "Several parties have been arraigned before the U/nited/ S/tates/ Commissioner, but they were discharged."[34]

Though civil rights had not been much of a court issue

[31]Gray v. Cincinnati Southern Railroad, 11 Fed. 685 (1882).

[32]State v. McCann, 21 Oh. St. 198 (1871); State v. Cincinnati Board of Education, 7 Oh. Dec. 129 (1873).

[33]United States v. Buntin, 10 Fed. 730 (1882).

[34]Cincinnati Commercial Gazette, October 17, 1883.

in the past, it was apparent as the legislature convened in January, 1884 that it had become a political issue. Both the retiring Republican Governor Charles Foster, and the new Governor, George Hoadly, spoke on the civil rights question.

Governor Foster stated that the Supreme Court decision had "caused a profound feeling of regret and alarm among that class of our fellow-citizens whom the law was especially designed to protect, as well as with all good citizens. . . ."[35] He continued by stating that the Negroes' civil rights were continually being "openly, grossly and shamelessly refused. . . ."[36] In what could be termed a characteristically "Republican response," his primary solution to the problem was national action (i.e. a constitutional amendment). He also, however, called for the prompt passage of a state civil rights law.[37]

Hoadly's comments in his inaugural address also seemed to be characteristic of his party. He maintained that since the passage of the Fourteenth Amendment to the Constitution the races had lived together in harmony. No legislation was needed since adequate protection was provided by the Federal Constitution and the common law of

[35]"Governor Charles Foster's Message to the Legislature," Cincinnati Commercial Gazette, January 8, 1884.

[36]Ibid.

[37]Ibid.

Ohio. The Supreme Court's decision received his strong endorsement. Civil rights was and always should be a state matter. The question of whether a civil rights law would be appropriate for Ohio was left by the Governor for the legislature.

> It may become necessary for Ohio to act /on civil rights legislation/ . . . It is for you /the legislature/ therefore, to consider whether there is danger in this direction /discrimination/ to any citizen of or sojourning in Ohio, and if there be, to provide, in advance, for prompt and severe punishment.[38]

Hoadly was suggesting that his party's opposition on the federal law was based solely on a sincere dedication to the principle that states-rights must be maintained to preserve American liberty. Since the Supreme Court had agreed with the Democratic position, the state must exert its responsibility and power to insure the protection of all citizens from infringments on their rights.

The Governor's remarks on civil rights were a major portion of his address and according to the Cincinnati Enquirer, they received the loudest demonstration.[39] The Governor's position was viewed by those newspapers that expressed an opinion as being pro-civil rights. The New York Globe applauded the Governor. "Governor Hoadly . . . in referring to the civil rights question, used language

[38]"George Hoadly's Inaugural Address," Cincinnati Commercial Gazette, January 15, 1884.

[39]Ibid.

which would have fitted well the mouth of the immortal Sumner."[40] Two Ohio Republican newspapers, the Cleveland Gazette and the Dayton Journal, suggested that Hoadly's position was too enlightened to be supported by the Democratic legislators. The Gazette stated "/it/ is too bad that the part of his /Hoadly's/ inaugural address, touching civil rights did not suit the Ohio Democracy in Congress."[41] The Journal added: "There seems to be nothing in it /the inaugural address/ to encourage the boys to come in and keep their toes warm."[42]

Though the newspapers' accounts of the legislators response to Hoadly's message presents some contradictions, it does serve to demonstrate that civil rights was a significant issue. One way to evaluate the degree of the legislator's commitment to this issue would be by examining proposed legislation.

The first civil rights bill was introduced on January 7 by Republican Senator George Ely. The Cincinnati Enquirer stated that this was the Republican caucus civil right bill.[43] The bill introduced by Ely resembled the 1866 federal Civil Rights Act which was still in force. It would have given to all people the same right to make and enforce

[40] New York Globe, February 2, 1884.

[41] Cleveland Gazette, January 26, 1884.

[42] Dayton Journal, January 18, 1884.

[43] Cincinnati Enquirer, January 8, 1884.

contracts, to sue, be parties, give evidence, and enjoy the equal benefit of all laws and proceedings for the security of person and property.[44] This proposed bill was obviously not an attempt to pass legislation similar to the 1875 Civil Rights Act. The bill's supporters may have introduced such mild legislation because they were uncertain of the Constitutionality of a bill similar to the 1875 Act or they may have been reflecting the practical belief that stronger legislation could not pass the Ohio legislature. The bill, however, was quickly buried in the Committee of the Judiciary.

On January 8, Republican Representative William Matthews introduced a civil rights bill into the House of Representatives.[45] The Cleveland Gazette reported on the debate on the Matthews' bill. Matthews stated that the bill was requested by the colored people's state convention which had been held in December.

> He also claimed that such a bill was necessary in view of the fact that a Civil Rights Bill had been declared unconstitutional, and that privileges and rights of our colored citizens were flagrantly abused.[46]

Matthews reemphasized, as did Governor Foster in his message

[44]Ohio, Senate Bill No. 1, Sixty-Sixth General Assembly, State of Ohio Legislative Reference Bureau.

[45]Ohio, Journal of the House of Representatives of the State of Ohio, Vol. LXXX (Columbus: G. J. Brand Co., 1884), January 8, 1884, p. 17.

[46]Cleveland Gazette, January 12, 1884.

the Republican ideological commitment to racial justice. He also showed, through his statement, that the Negroes were still able to exert an influence on Republican party policies.

The Democratic party, at least through the eyes of the Republican Cleveland Gazette, was not as responsive to the interests of the black community. The Gazette stated that the Democrats' position was that the bill was "mere buncombe."[47] The Democrats argued that the Negro already had the same civil rights as the white man and that this bill would give the Negro a special right not granted whites. Though there was united opposition to the bill, according to the Gazette, by the Democracy of the House, they did not care to go on record for or against it.

> Every Democratic member was opposed to the bill and spoke against it, but when forced to place themselves on record some voted for its reception only to allow it to go to a committee where it will die.[48]

The Gazette was correct on this point: The Matthews' Civil Rights Bill died in committee.

On January 15, however, another civil rights bill was introduced.[49] It was introduced into the Senate by Democratic Senator William Crowell, Chairman of the Judiciary

[47] Ibid.

[48] Ibid.

[49] Ohio, Journal of the Senate of the State of Ohio (1884), 80: 28, January 15, 1884.

Committee. An examination of this civil rights bill shows that it was modeled after the federal act, and contained the same list of protected rights. Though it closely resembled the federal bill, there were some very significant differences. First, the second proviso in the federal act which stated that "a judgment for the penalty in favor of the party aggrieved, or a judgment upon an indictment, shall be a bar to either prosecution respectively" was amended.[50] The Crowell version read "that a judgment in favor of the party aggrieved, or punishment upon an indictment, shall be a bar to either prosectuion respectively."[51] In this respect the Crowell bill is more liberal than the federal bill, because civil action is barred only if a conviction under a criminal action is obtained. If the defendant is found innocent then he is subject to possible civil suit. While the Crowell bill was more liberal than the federal law in respect to the proviso it was much more restrictive in the penalties that it imposed. The original Crowell bill established a maximum fine of five hundred dollars and/or a minimum thirty day jail sentence, while the federal act established a minimum five hundred dollar and a maximum one thousand dollar fine and/or thirty days

[50]U.S., An act to protect all citizens in their civil and legal rights, Statutes at Large, XVIII, ch. 114, p. 335.

[51]Ohio, Senate Bill No. 12 (Crowell Bill), Sixty-sixth General Assembly, State of Ohio Legislative Reference Bureau.

to one year imprisonment. Also the five thousand dollar fine in the federal acts' "jury section" was reduced in Ohio to five hundred dollars.[52]

When the Crowell bill emerged from the Judiciary Committee on January 30 it was seriously amended. Aside from some minor changes in wording, the amended bill further reduced the penalties the bill imposed. The term of imprisonment was changed from a minimum of thirty days to a maximum of thirty days. It also dropped the maximum fine and forfeiture from five hundred to one hundred dollars.[53]

The Senate passed the Crowell bill by a vote of thirty to one on January 31.[54] Twenty of the twenty-two Senate Democrats supported the bill, while an equal percentage of Senate Republicans (ten of eleven) supported the bill.

The Cincinnati Commercial Gazette was the only paper to give the debate any significant coverage. Senator O'Neil, a Democrat and the only man to vote against the bill, expressed what was a common objection. "The Senator thought that the colored man would fare better when he stood out among the people without the crutches of special legislation."[55] Two other Senators voiced similar

[52]Ibid.

[53]Ohio, Journal of the Senate, 95, January 30, 1884.

[54]Ibid., 100, January 31, 1884.

[55]Cincinnati Commercial Gazette, February 1, 1884.

opposition, but maintained that they would vote for this "special legislation."

> Mr. Williams (D.) [Democrat] favored the passage of the bill simply because both parties were exceedingly anxious to do a service for the colored man, which will do him no practical good, but which will aid them in securing the colored vote. He admitted that he stood there himself.[56]

Dr. Lewis [Democrat] was opposed to class legislation, but would vote for the bill in order that this trouble might pass away and cease to bother them in legislation.[57] Mr. Oren [Republican] wanted the colored people to know that Senator Williams and the Democrats favored the bill for the simple reason that they expected to catch colored votes."[58] This unbelievably blatant language by some Democrats seems to be rather poor politics in that it antagonized those who were apparently being wooed. This language probably did not please the Democratic leadership. This leadership did not, however, produce any other significant argument (or at least the Commercial Gazette chose not to print any such argument) to refute those Democrats. Democrat O'Neil asked Crowell why the Democratic party had not shown interest in the colored people and in this kind of legislation before the nullification of the Federal Civil Rights Act?[59]

[56]Ibid.

[57]Ibid.

[58]Ibid.

[59]Ibid.

Crowell's answer, as cited in the Commercial Gazette, was evasive. "Mr. Crowell answered by asking why a Democratic State Supreme Court had decided that a man who had more white blood than black could vote in this state."[60] I assume that this was meant to show a lineage of Democratic concern for the blacks, which was an extremely weak answer to O'Neil's query.

The bill was introduced in the House on February 5. A group of Democrats were defeated, twenty-one to seventy-three, in an effort to return the bill to committee.[61]

The main Republican effort in the House was centered on trying to expand the coverage of the bill to include eating houses and restaurants. A united Republican vote with the help of six Democrats passed this amendment, forty-seven to forty-six.[62] The Commercial Gazette stated that "the Democrats were dumb-founded when the vote was announced."[63] The Democrats, however, were able to get the amendment reconsidered. The disobedient Democrats were whipped into line and on a second vote the amendment was defeated by a straight party vote (thirty-seven to fifty-two). With this amendment out of the way the bill passed

[60] Ibid.

[61] Ohio, Journal of the House, 155, February 5, 1884.

[62] Ibid., p. 156.

[63] Cincinnati Commercial Gazette, February 6, 1884.

unanimously.[64]

Since the Democrats labeled the Matthews' civil rights bill "buncombe" but supported the Crowell bill, a comparison of the two bills would seem to be in order to determine what was acceptable to the Democrats and what was not acceptable.

The first point of difference was in the title. The Matthews' bill was titled "A bill to define and secure civil rights," while Crowell's bill was titled "A bill to protect all citizens in their civil and legal rights." While the Crowell bill protected only citizens, the Matthews bill protected the rights of "all persons."[65] The Crowell bill was thusly more restrictive as to whom was protected under the bill. The Cincinnati Commercial Gazette recognized and was critical of this feature of the Crowell bill, stating that it would not "protect colored travelers from other States."[66]

The other major differences were in the second (penal) sections. The Matthews bill established a fine of from one hundred to five hundred dollars and up to three months imprisonment (at the discretion of the court) for a criminal conviction, while the Crowell bill established a

[64]Ohio, Journal of the House, 158, February 5, 1884.

[65]Ohio, Senate Bill No. 12 (Crowell Bill); House Bill No. 10 (Matthews Bill); Sixty-Sixth General Assembly, State of Ohio, Legislative Reference Bureau.

[66]Cincinnati Commercial Gazette, February 6, 1884.

maximum penalty of one hundred dollars and/or up to one month imprisonment. In terms of civil damages the Matthews bill maintained that the aggrieved could pursue a civil action and was entitled to compensatory and exemplary damages (a point not clarified by common law). The Crowell bill limited forfeiture to a maximum of one hundred dollars. This prevented the aggrieved from obtaining the significant relief that at least was theoretically possible if a civil suit was initiated. Also, as previously mentioned, the Crowell bill prohibited both criminal and civil penalties from being imposed.[67] While both bills were modeled in form after the 1875 Federal Act, both were weak in comparison to the civil and criminal penalties imposed by that act. Both bills, but particularly the Matthews bill, were more liberal than the federal law in its scope (application to civil and criminal action).

The Crowell bill added a jury section which was similar, except for a lower penalty, to the jury section of the federal law.[68] Since the jury section had not been ruled unconstitutional and since the Republicans preferred federal action it is logical that the Matthews bill would omit this section. Inclusion of the section by the Democrats was probably due to a feeling that regulation of juries was a

[67]Ohio, Senate Bill No. 12 (Crowell Bill); House Bill No. 6 (Matthews Bill).

[68]Ohio, Senate Bill No. 12 (Crowell Bill).

state responsibility.

In conclusion, the Matthews bill differed from the Crowell bill principally in that it was a stronger bill. While the Republicans seemed solidly committed to civil rights, most Democrats demonstrated that they would support civil rights only if their party received credit and if the bill was weak in the penalties it imposed. Except for the references to the subject by Governor Hoadly in his inaugural, there is little evidence, other than political, to explain the Democrats' support of the bill. Nothing was reported from the debate to show any ideological motivation. Democratic reluctance to debate the civil rights issue was apparent when the House Democrats cut off any debate by demanding the previous question.[69]

The partisan interest in the bill can also be seen in examination of the press reaction. The Democratic press maintained that the bill showed who were the true friends of the Negro. The Cincinnati Enquirer, apparently changing its view on the wisdom of such legislation, reported that the legislature had practically reenacted the federal law and downgraded the almost crippling changes in the criminal section. "This bill is the same [as the federal law] except in a few minor details in regard to penalties."[70] The

[69]Ohio, Journal of the House, 157, February 5, 1884.

[70]Cincinnati Enquirer, February 1, 1884.

Cleveland Plain Dealer resorted to outright falsehood in order to emphasize the Democratic legislators' effort to the Negro the civil rights denied them by the Republican Supreme Court.

> The extraordinary spectacle was witnessed in the Ohio legislature yesterday of the Republican members speaking and voting against the bill granting civil rights to colored people. . . . /The/ colored voters of Ohio will reflect that acts are more than empty words and that in the State of Ohio they are accorded equal civil rights by a Democratic law, introduced by a Democrat in a Democratic legislature and made a law by Democratic votes in the face of Republican opposition.[71]

A similar statement was made the following day.

The Afro-American, edited by the Negro Democrat Peter H. Clark, tried to stress the Democrats concern for the black community.

> At the invitation of Senator Crowell, Peter H. Clark went to Columbus last Wednesday and addressed the caucus for the purpose of influencing the passage of the /civil rights/ bill. Since the Republicans failed when they had the opportunity to protect the colored man's rights we are happy the Democracy of Ohio thus rebuked them by adoption of the civil rights bill.[72]

The Republican press was very contemptuous of the Democrats' bill. The Ohio State Journal ridiculed Clark's appearance before the caucus.

> One feature of the side-show was Senator Crowell's introduction of Peter H. Clark, the white washer of Cincinnati to argue civil rights into the caucus.

[71]Cleveland Plain Dealer, February 7, 1884.

[72]Afro-American; quoted in Washington Bee, February 16, 1884.

He had been in the guiding strings here all day.[73]

The Canton Repository blasted the Cleveland Plain Dealer's accusations of Republican opposition to the bill:

> The quintessence of miserable meanness was made manifest in the Democratic effort to charge Republicans with opposing the civil rights law. . . . The effort of Republican members was to amend and correct shortcomings. After it was found that nothing better could be secured of a Democratic house the bill was passed. The Republican legislators voting for it as the best thing obtainable from the present legislature.[74]

The Cincinnati Commercial Gazette added that "/the/ law is a political dodge, and nothing else, but it is the best that can be wrung out of this Democratic Legislature."[75] The Commercial Gazette continued the Republican attack upon the conciliatory Negroes such as Clark.

> This bill will not be at all satisfactory to the colored people, with the exception of men like Peter H. Clark, who, for the sake of office, are trying to secure the colored vote for the Democratic party.[76]

The passage of the bill was not the end of the civil rights question in the legislature. Representative George Love, who had introduced the amendment to include eating houses and restaurants, reintroduced his amendment as a separate bill in the House on February 18. It was referred to the Committee on Manufactures and Commerce where it was

[73] Ohio State Journal, January 31, 1884.

[74] Canton Repository, February 8, 1884.

[75] Cincinnati Commercial Gazette, February 6, 1884.

[76] Ibid.

buried.[77] The bill was again reintroduced on March 7 by Love and introduced into the Senate by Republican John Evans.[78] Both bills also died in committee. On March 10, Crowell introduced a bill amending his original bill.[79] The amendment was almost identical to Love's bill. The only changes being the inclusion of barber shops to the enumeration (saloons were also initially included but were deleted in committee) and the exclusion of the reference to "race and color."[80] Crowell's amendment passed the Senate eighteen to five (four Democrats and one Republican in opposition).[81] It then passed the House unanimously.[82]

In February the Democratic leadership had used strong party discipline to defeat the Republican sponsored amendment, but supported a similar amendment when proposed by a Democrat in March. The only possible explanation would be that either the Democrats hoped to silence the Republicans (who seemed quite determined on this point) and reap additional political advantage by passing the amendment

[77]Ohio, Journal of the House, 251, February 18, 1884.

[78]Ibid., 478, March 7, 1884. Cleveland Gazette, March 15, 1884.

[79]Ohio, Journal of the Senate, 422, March 10, 1884.

[80]Ohio, Senate Bill No. 154, Sixty-Sixth General Assembly, State of Ohio Legislative Reference Bureau.

[81]Ohio, Journal of the Senate, 475, March 25, 1884.

[82]Ohio, Journal of the House, 631, March 25, 1884.

themselves, or black pressure had forced this change in attitude, or both.

One commentator, Valeria Weaver, maintained that it was a response to specific problems created by the inadequacy of the original bill.

> Almost immediately the inefficacy of the general terms of the bill and the practical sentiments of the white community revealed themselves. Within one month there were enough incidents in restaurants, eating houses, and barber shops to require passage of a new law which specifically enumerated these places.[83]

No evidence, unfortunately, was presented to support this assertion. An examination of all available newspapers, particularly the Cleveland Gazette, revealed only two incidents. Both involved refusal of a meal in a restaurant. The Gazette in the first example on March 8 stated that "here was a chance for the Republicans to insert a clause in the new civil rights bill."[84] The second example occurred on March 22, twelve days after the Crowell Amendment passed.[85] Nowhere is the issue of the inadequacy of the list of protected accommodations treated with the fiery rhetoric that the Gazette displayed on issues that it believed to be important. While it was obviously true that the blacks objected to the narrowness of the bill, this was

[83]Valeria Weaver, "The Failure of Civil Rights 1875-1883 and its Repercussions," Journal of Negro History, LIV (October, 1969), pp. 375-376.

[84]Cleveland Gazette, March 8, 1884.

[85]Ibid., March 22, 1884.

minor when compared to their contempt for the politician's weak commitment to civil rights in general.

The Cleveland Gazette treated the bill with cynicism. It reminded its readers that the bill's leading supporter in the House had previously stated that the Democratic party did not want the "nigger vote."

> He [now however] sees what a great help the colored vote of Ohio could be to the Democratic party - his party - and therefore forgets his recent remark concerning the "nigger vote," as he pleases to term the colored vote, and assisted his brethren in vainly trying to make the Republican members of the House antangonize the bill and at the same time prepare a bait to catch the colored vote.[86]

A meeting of blacks was called in Cleveland to protest the lack of equality of rights and denounce the legislature's effort in civil rights legislation. A resolution was passed which stated in part:

> Resolved, That injustice has been done our race by repeated appeals to social prejudice, race issues and insincere legislation, and greatest of all was the recent legislative enactment . . . which we believe was not only an insult to our race, but to the past work and sacred memory of Giddings, Wade, Chase, Garfield, Charles Sumner and a host of others whose lives were devoted to the general welfare of our race and the common cause of humanity.[87]

The new law was also found objectionable by the "Equal Rights League," a black pressure group, with an estimated two hundred chapters in Ohio, organized to demand the repeal of the

[86]Ibid., March 1, 1884.

[87]Ibid.

"black" laws and fight for a state civil rights law.[88] In an open letter to the "colored voters of Ohio" the league attacked the law and those blacks that supported it. "The act does not meet the wants of the people in any sense. . . . [The] act as passed is of no practical benefit to the colored people. . . ."[89] Their objections were several: that a maximum fine of one hundred dollars was established but no minimum was set ("Nominal damages could only be obtained where a case is fully proven under its provisions"); also with one hundred dollars established as the maximum fine, justices of the peace had original jurisdiction; another objection was that a civil judgment barred criminal action. The letter concluded by calling for a united stand against this attempt to "hoodwink our people."[90]

Black agitation for equal rights went much deeper than simply access to the public accommodations listed in the bill. Strong opposition, which seemed to be centered in the old abolitionist Western Reserve District was directed against the "black laws" (i.e. laws against miscegenation, laws permitting segregated schools and the use of the word "white" in the state constitution). When Senator Evans proposed to amend the civil rights bill to include restaurants and eating-houses the Cleveland Gazette was quick to respond. While supporting this amendment, it called the

[89]Ibid., March 8, 1884.

[90]Ibid.

legislature's attention to the need to abolish the "black laws."

> . . . /If/ they are sincere in their present efforts to place us on perfect equality with the white citizens of Ohio, they will not hesitate a moment to put forth strenuous efforts for the speedy consummation of their /the Negroes/ desire.[91]

The segregated school issue was hit heavily by the Cleveland Gazette. It claimed that the Negroes of Cuyahoga County were unanimous in their opposition to separate schools.[92] The key legislative action in the opinion of the Gazette centered upon the effort to repeal section 4008 of the Ohio statutes, which permitted separate schools. This bill was introduced early in the House of Representatives by Republican John Littler.[93] No action was taken, however, until late in the session. The bill was reported by the Judiciary Committee on March 31 with the recommendation that the bill be passed with the amendment that separate schools could be maintained if a majority of the black people should vote in favor of it.[94] Debate on the bill took place on April 9. Representative S. W. Brown (Republican) pointed out that this should be passed if the legislature was to act consistently with their position on the civil rights law. "/This/ legislature has abolished the

[91]Ibid., March 15, 1884.

[92]Ibid., March 1, 1884.

[93]Journal of the House, 52, January 17, 1884.

[94]Ibid., 678, March 31, 1884.

color line in railroad cars, steamboats, theaters and restaurants and should now abolish the color line in the schools."[95]

A strong effort was made by Democrats to "sidetrack" this legislation. An unsuccessful attempt was made to amend the bill to allow separate schools after the vote of a majority of both races approved it.[96] Also a letter was presented from Peter Clark opposing the legislation. Clark, who had for generations been active in Negro schools in Ohio and who believed that separation was necessary until equality was reached, told the legislature that the bill was unsatisfactory to the black people.[97] The opposition then made an attempt to get the bill indefinitely postponed. This was defeated by a twenty-seven to sixty-eight vote.[98] The bill was then defeated when a constitutional majority could not be achieved.[99] The Gazette stated that all Republicans voted yes, while all negative votes were Democratic.[100] Later it stated that "all the Democrats voted against and consequently killed this bill to wipe out

[95] Cleveland Gazette, April 12, 1884.

[96] Ohio, Journal of the House, 770-771, April 19, 1884.

[97] Cleveland Gazette, April 12, 1884; Cincinnati Commercial Gazette, April 10, 1884.

[98] Ohio, Journal of the House, 771, April 19, 1884.

[99] Ibid.

[100] Cleveland Gazette, April 12, 1884.

one of Ohio's black laws."[101] It was maintained by the Gazette that the additional three votes that were needed could have been won over if it had not been for men such as Clark who insisted that such rights were not desired by the black community. "The law was defeated by a ring of contemptible, unscrupulous knaves whom decency and principles blushes to call colored men."[102] The Gazette praised the Republicans for their strong stand for equality, and then added "/for/ the fifty-three /sic/ Democrats of the Legislature and particularly Traitor Clark, the Democrat the colored people have nothing but contempt.[103]

Though the Gazette was generally correct, it was inaccurate in stating that the Democracy was unanimous in their opposition. Eleven Democrats actually joined the thirty-nine Republicans in favoring the bill, while thirty-two opposed it and seventeen (along with five Republicans) helped kill it by abstaining.[104]

If the school issue was the test for the legislature's concern for the rights of the black people, the Democrats failed while the Republican party passed. It does seem to be important, however, that the bill was only narrowly

[101] Ibid.

[102] Ibid.

[103] Ibid.

[104] Ohio, Journal of the House, 771, April 19, 1884.

defeated. Eleven Democrats showed enough courage to vote aye and the bill was defeated by abstainers who were reluctant to commit themselves.

Two conclusions can be drawn from the Ohio legislature's action in 1884. The Republican commitment to racial equality and their desire to meet the demands of their black constituency continued into the 1880s. Also the Democratic party was at least willing to support "in principle" state civil rights legislation. Though some Democrats may have responded to the Supreme Court's civil rights decision with a sincere desire to insure the protection of civil rights, the evidence seems to show that in general the Democratic response was limited and politically motivated.

INDIANA

Indiana was very similar to her neighboring state of Ohio in several ways. Both bordered the Ohio River and also therefore the ex-slave state of Kentucky. Both had cultural and economic ties with the South. The area was a center of much "copperhead" activity during the war and had had a long reputation as being strongly anti-Negro. Indiana and Ohio also had in common the fact that they both had a large number of black voters, who were of great political importance in these evenly politically balanced states. Also, Indiana in 1885, like Ohio the previous year, had a

legislature which was under Democratic control.

The announcement of the Supreme Court decision in the Civil Rights Cases brought a reaction in the Democratic Kokomo Dispatch which was very similar to the Cincinnati Enquirer and the Cleveland Plain Dealer in Ohio. The Dispatch was well aware of the possibility of using the decision to strengthen their party's political position in Indiana. The Dispatch made it clear that they supported the decision of the Supreme Court.[105] They also did not believe that any legislation along a similar vein was necessary. "The fact is now apparent that there was no necessity for the civil rights acts for the negro was gradually but surely working into his proper place in society."[106] In addition, however, the paper attempted to convince the Negro that the decision showed the insincerity of the Republican party. It stated that "the Republican party passed the bill for partisan ends, though they knew it was unconstitutional, then eight years later the Republican press clapped when a Republican Supreme Court ruled it unconstitutional."[107] The October 25, 1883 issue of the Dispatch carried a full page interview with a black man, Joseph Braboy, who maintained that the decision would "force him to sever his alliance

[105] Kokomo Dispatch, October 18, 1883.

[106] Ibid., November 1, 1883.

[107] Ibid.

with the Republican party."[108] The Dispatch also alleged that at a Republican party meeting after the decision no Negro was allowed to speak.[109]

The Dispatch worked hard to discredit the Republicans in the eyes of the Negro, but did nothing to improve the image of the Democratic party. The paper apparently believed the Negro would have nowhere else to go, and therefore must gravitate to the Democracy.

On the other side of the political fence the Republican Indianapolis Journal also supported the decision but feared it would reopen the civil rights issue. It maintained that dissatisfied Negroes should seek a constitutional amendment or state legislation as a means of insuring the protection of their civil rights.[110] One way that this dissatisfaction was shown was at a public meeting by Negroes in Indianapolis after the decision. This meeting resolved that "we recognize in the decision a narrow partisan view entirely at variance with those great principles enunciated by Lincoln, Sumner, Morton and other great Republican leaders."[111]

When the Democratic controlled Indiana legislature

[108] Ibid., October 25, 1883.

[109] Ibid., November 1, 1883.

[110] Indianapolis Journal, October 16, 1883.

[111] Kokomo Dispatch, October 25, 1883.

assembled in early 1885, civil rights was a question for their consideration. On January 13, Democratic Senator W. C. Thompson introduced a civil rights bill into the legislature.[112] The bill was identical to the Ohio Civil Rights Laws of 1884.[113] The Indianapolis Journal was not impressed by the introduction of the bill. It predicted that it would attract more attention than it deserved. "It is in the nature 'buncombe' proceeding, because there is no inequality of the rights of citizens."[114] This statement is curious and seems to be inconsistent with other pronouncements of the paper, both before and after this remark. The only logical explanation seems to be that this was a partisan response to a Democratic initiative. The Journal was trying to discredit any sign that the Democrats could be making an effort to satisfy the wants of black people.

Two days later another civil rights measure was introduced into the legislature by Republican Representative James Townsend, a black man. The Kokomo Dispatch maintained that the bill was "substantially the same" as the Thompson bill with the exception that the Thompson bill did not

[112]Indiana, Journal of the Indiana State Senate during the Fifty-fourth Session of the General Assembly (1885), 37, January 13, 1885.

[113]Indiana, Senate Bill No. 43 of the Fifty-fourth Session of the General Assembly, Indiana State Library Legislative file.

[114]Indianapolis Journal, January 14, 1885.

prohibit amalgamation.[115] An examination of Townsend's bill proves this to be erroneous. This bill stated "that all distinctions of race and color made in any and all of the laws of this State, are repealed."[116] From a legal point of view, this bill was far from revolutionary. It simply asked the State to make its laws consistent with the Fourteenth Amendment to the Constitution and the Civil Rights Cases decision which was so widely applauded. The Indianapolis Journal which thought the Thompson bill to be "buncombe" supported this bill. "It proposed to omit all allusions in existing laws to races, thus making no discrimination and making the right of all citizens equal."[117] It would seem as though the Townsend bill should have been easier for the Democrats to accept than the Thompson bill. It only called for what the Democrats claimed they stood for, equality under the law. It made no attempt to regulate what many Democrats considered to be "social relationships" as did the Thompson bill.

This type of thinking, however, did not prevail. The bill was sent to the Committee of the Judiciary with instructions to report "what discriminations, if any, now

[115] Kokomo Dispatch, March 12, 1885.

[116] Indiana, House Bill No. 99 of the Fifty-fourth Session of the General Assembly, Indiana State Library Legislative file.

[117] Indianapolis Journal, January 16, 1885.

exist in the laws of this state."[118] The Committee, a month later, reported three examples in the prohibition of service in the state militia, prohibition of mixed marriages and in segregated schools.[119]

Meanwhile the Senate began action on the Thompson bill. On February 4, 1885 the Senate Committee on Federal Relations, which consisted of three Republicans and three Democrats, reported the Thompson bill.[120] The only amendment recommended by the committee was a change in the wording of the proviso. The proviso was amended to read: "That a judgment in favor of the party aggrieved, or punishment, or a committal upon an indictment, affidavit, or information shall be a bar to further or other prosecution or suit."[121] Though it would seem that the Committee's purpose was to clarify the intended meaning of the proviso in the Ohio law, there still remained some confusion as to the "intended meaning" of the Ohio law. During the February 10 debate on the bill, Senator Hilligass remarked that the bill allowed the person discriminated against "the right to sue and obtain a judgment for $100 damages, besides

[118]Indiana, Journal of the Indiana State House of Representatives during the Fifty-fourth Session of the General Assembly (1885), 245, January 23, 1883.

[119]Indiana, Journal of the House, 913, February 25, 1885.

[120]Indiana, Journal of the Senate, 264, February 4, 1885.

[121]Indiana, Laws of the State of Indiana (1885), p. 76.

prosecuting criminally."[122] Though this seems to be an incorrect interpretation, the Indianapolis Journal's account of the debate shows no one responding to Hilligass' contention. In general the debate on February 10 was characterized by the Indianapolis Journal as "spirited."[123] The Journal stated that the "discussion became political in its tendency, with the Democrats against and the Republicans for the rights of the Negro." The Journal, obviously coloring its observations to strengthen their party's appeal to blacks, went on to say that

> Senators Hilligass, Magee and others on the Democratic side, /opposed it/ for the reason that it gave the negro greater rights than he should be allowed, /while/ Senators Foulke, Youche and other Republican members strongly upheld the party principle of "equal rights to all citizens, without regard to color or nationality."[124]

The Journal also offered some more specific information on the debate. The bill's sponsor, Senator Thompson, defended his bill in terms of the Supreme Court's decision.

> He said, "that this bill was passed by Congress, but set aside as unconstitutional by the Supreme Court of the United States, upon the ground that it was the duty of the several States to pass it, if they desire to, and it had already been passed," he said, "by many of the States."[125]

[122] Indianapolis Journal, February 11, 1885.

[123] Ibid.

[124] Ibid.

[125] Ibid.

Thompson expressed the view of those states rights Democrats, who believed that since the question of civil rights had been returned to its rightful place, it was the duty of the states to exert their responsibility and protect these rights.

On the other side of the aisle the old spirit of Republican idealism was echoed by Senator William Foulke. Senator Foulke, who boasted proudly that he was the son of an Abolitionist, stated:

> The Republican party has ever been and still is in favor of the principles of the bill. If held unconstitutional as a matter of law, because it was a proper subject of state legislation. I would advocate it in the very place in which it is unquestionably lawful legislation.[126]

Foulke was concerned that civil rights be protected and seemed little concerned with who passed it.

The Journal's coverage of the debate suggests that the opposition, which was overwhelmingly Democratic, centered around the belief that the bill was special legislation benefiting one class. J. M. Smith stated that "the enactment of any law which will single out any class in the State, white or black, should not be a principle that actuates a legislature."[127] He continued, "I don't believe it right to undertake to legislate it [the Negro] higher than

[126] Ibid.

[127] Ibid.

its place is socially."[128] Senator William Hilligass stated that this "Legislature would be going beyond its duty to grant a dead-beat, no matter what his color, the privilege to sue under such circumstances."[129] Hilligass went on to state that he opposed the entire bill and hoped to see it voted down.[130]

The impact of the Townsend bill on the Senate can be seen in a proposed amendment to the bill by Senator Foulke. His amendment would have incorporated the Townsend bill into the Thompson bill.[131] Senator L. M. Campbell offered an amendment to Foulke's amendment. "Provided, That this act shall not apply to the laws on the subject of marriage."[132] Campbell's measure failed by a narrow vote, nineteen to twenty-one.[133] The Democrats generally supported it and the Republicans opposed (five members of each party crossed over to vote with the majority of the other party). The Foulke's Amendment itself was then voted on and failed thirteen to twenty-eight with the great majority of Democrats in opposition, though six supported it. The bill

[128]Ibid.

[129]Ibid.

[130]Ibid.

[131]Indiana, Journal of the Senate, 265, February 10, 1885.

[132]Ibid.

[133]Ibid.

was then brought to a vote. Though Hilligass had hoped to see the bill defeated, he and most of the others who had opposed it in debate voted for it. The bill passed thirty-six to five and was sent to the House.[134]

In the House, however, the Townsend bill required the members consideration before the Senate bill. On March 2, the Townsend bill finally reached the floor. It had been postponed once and on March 2 with the gallery full of Negroes that came to hear Townsend, an attempt was made to postpone it again or substitute the Thompson bill.[135] Townsend was finally however allowed to speak. He spoke mostly against the miscegenation laws maintaining that it was contrary to simple and exact justice as well as the State and Federal Constitutions.[136] Just as an attempt was made in the Senate to amend the Foulke Amendment, a majority of the House Democrats tried to amend the Townsend bill to provide that the provisions should not apply to the existing laws relating to miscegenation. This amendment was defeated by the Republicans and a minority of the Democrats.[137] The The Indianapolis News reported that the amendment was

[134]Ibid., p. 266.

[135]Indianapolis Journal, March 3, 1885.

[136]Ibid.

[137]Indiana, Journal of the House, 996-997, March 2, 1885.

adopted by a decisive majority but when the result was announced many Democrats changed their vote and defeated it.[138] With these matters out of the way, the House voted forty-three to forty to indefinitely postpone the bill.[139] The vote for postponement was solidly Democratic, with eleven Democrats joining the Republicans in opposition to postponement. The Indianapolis Journal condemned the Democrat's position. "The nature of the inordinate love of the Democratic party for the colored people was evinced in the House yesterday."[140]

The attempt of Democrats in both Houses to exclude miscegenation laws and the focus of Townsend's remarks would seem to indicate that the controversy over the bill centered on the question of miscegenation and not on the separate school issue which received little attention.

On March 7, the House turned its considerations to the Thompson bill. Democrat Representative Gooding, who had proposed the amendment to Townsend's bill, presented Thompson's bill. Gooding's opening remarks were briefly cited in the Indianapolis Journal:

> The purport of the bill is that all persons shall enjoy the accommodations of public places - not private families. It is a complete civil rights law but does not change the law preventing inter-

[138] Indianapolis News, March 3, 1885.

[139] Indiana, Journal of the House, 998, March 2, 1885.

[140] Indianapolis Journal, March 3, 1885.

> marriage. It gives the person refused these accommodations the right to sue, or, if they do not sue, the man thus discriminating may be prosecuted under the criminal laws.[141]

Gooding's view of the bill's proviso differs from that of his colleague in the Senate, Hilligass, and would seem to be the correct interpretation. Gooding then went on to explain his motives for supporting the bill. "It seems that the colored man has rights, but they feel they are discriminated against. It will be policy to pass it."[142] Townsend interrupted Gooding: "the gentleman says it is policy. Is it not justice?"[143] Gooding tried to cover his tracks by stating that "right is always policy."[144] Townsend challenged Gooding's assertion and made a few final remarks concerning the bill. "This bill of the General Assembly will bring gladness to the hearts of every colored man and woman in the state."[145] He sarcastically added, "/it/ is a sad commentary on the state of affairs when laws have to be enacted to protect the most docile class of people known."[146] The bill then passed unanimously.[147]

[141]Ibid., March 9, 1885.

[142]Ibid.

[143]Ibid.

[144]Ibid.

[145]Ibid.

[146]Ibid.

[147]Indiana, Journal of the House, 1119, March 7, 1885.

The Kokomo Dispatch, which had made a strong effort to attract Negroes to the Democratic party by using the Civil Rights Cases decision, in 1885 tried to use the State's Civil Rights Laws, for this purpose. The Dispatch, either out of sincere confusion or deceit, misrepresented the law to its readers.

> The House on Saturday afternoon passed Senator Thompson's Civil Rights Bill by an unanimous vote. It grants the colored people equal school privileges with the whites and removes all distinctions of race and color in existing statutes. It is substantially the same as the bill of Representative Townsend which was defeated, except that it does not repeal the law prohibiting amalgamation.[148]

The Dispatch went on to state that "nearly every member on the floor explained his vote and asserted that it gave him pleasure to assist in promoting the welfare of the colored people."[149] Even before the bill was finally passed, the Dispatch was using it in its appeal to the black voter.

> The colored voters of Indiana will presently open their eyes to the true situation. /The legislature/ . . . with its two-thirds Democratic majority has passed the civil rights bill. Oh, the Democratic party is the enemy of the colored race with a vengeance.[150]

The action of the Democratic controlled Indiana legislature closely paralleled the action of the Ohio Democrats the previous year. The bill passed by Indiana was identical

[148] Kokomo Dispatch, March 12, 1885.

[149] Ibid.

[150] Ibid., February 9, 1885.

to the Ohio bill with the exception that the proviso to section two was more detailed. Also, like Ohio, the majority of the Indiana Democrats refused to respond to the primary demands of the black community by abolishing the "black laws," although they indicated some willingness not to oppose the removal of the provisions for separate schools. Again as in the case of Ohio the Republicans and a minority of Democrats displayed what seemed to be a strong commitment to equality under the law.

The conclusion drawn from the Ohioans effort in 1884 is also applicable to Indiana in the following year. Both major political parties were willing (in varying degrees) to recognize the principle that public discrimination was unlawful. It is difficult to assess the motives. It was, however, very evident from the debates and votes that the politically dominant Democratic party was very careful not to antagonize the black voter. The black voter was not forgotten by these Ohio Valley politicians, on the contrary, they went as far as they felt they had to go to win these voters to their side.

CHAPTER III

THE RESPONSE IN ILLINOIS

The State of Illinois was unique among the states that passed civil rights legislation in 1884 and 1885. Like the other Ohio Valley states of Ohio and Indiana it had a large, politically active black population that could be a very significant faction at election time. Also like Ohio and Indiana, Illinois bordered the ex-slave states and had a reputation for being very racist in attitude. Unlike these other states, however, Illinois in 1885 had a numerically balanced legislature. Neither party was in a position to impose its policies on the other.

The Supreme Court's decision met with much the same response in Illinois as in other states. The Democratic Chicago Times and the Illinois State Register both applauded the nullification of what the Register called the 1875 "Force Bill."[1] The Republican press also supported the decision.[2] Even the Chicago Inter-Ocean, which had a good reputation as a champion of Negro rights gave the decision its general support from a legalistic point of view, though

[1]Chicago Times, October 16, 1883; Illinois State Register, October 17, 1883.

[2]Chicago Tribune, October 17, 1883; Illinois State Journal, October 20, 1883.

it feared the social and political repercussions that could arise out of the decision. It termed the law a "social rights" law rather than "civil rights."[3] The paper went on to summarize its position on the decision:

> We regret that the Supreme Court did not see its way clear to ratify the constitutionality of the Supplementary civil rights act. . . . This regret, however, is based not so much on any real value that attaches to the act as to the objectionable use which will be made of the decision to create the impression among colored men that the Republican party has in some way failed to fulfill its pledges.[4]

No newspaper responded to the decision by calling for any state action. The strongly Republican Illinois State Journal ruled out all such legislation as contrary to the best interests of the Negro.[5]

While the white press reacted calmly, there was a very different reaction in the black community. The "Colored State Convention" was meeting in Springfield at the time that the decision was announced. The decision occasioned a great deal of comment at the Convention. The Convention was seemingly in agreement that the decision would hurt the Republican party. C. S. Smith of Bloomington stated that the decision was the "death knell of the republican party" because of the black political strength in key states like

[3]Chicago Inter-Ocean, October 17, 1883.

[4]Ibid.

[5]Illinois State Journal, October 20, 1883.

Ohio, Illinois, New York and Pennsylvania.[6] The Negro Republican leader John W. E. Thomas also maintained that the decision would injure the party.[7]

An interesting resolution was passed unanimously by the convention. The resolution began by attacking the Supreme Court for its opinion, sarcastically paraphrasing the Supreme Court's earlier position against Negro rights, the Dred Scott decision.

> The Supreme Court's latest edict: The negro has no rights which the public is bound to respect. The Republican party recognized the abridgment of our civil rights and sought a remedy, but alas in vain.[8]

The resolution expressed a disenchantment with civil rights legislation, recognizing it to be no panacea.

> Class legislation is a failure. We have had our share and we want no more. Deeds of land, mechanic's certificates and commercial papers must be the civil rights bills of the future.[9]

The resolution went on to make a strong statement for political independence. "The remedy henceforth must be in our own hands. . . By the intelligent exercise of our franchise we shall demand the rights which hitherto have been denied. . . ."[10] The resolution suggested that the Negroes

[6] Chicago Times, October 17, 1883.

[7] Ibid.

[8] Illinois State Register, October 17, 1883.

[9] Ibid.

[10] Ibid.

should stop asking for someone to protect their rights and start asserting their economic and political muscle.

Though this was the position of the Convention in October 1883, in early 1885 when the Legislature met in Springfield two petitions were presented calling for passage of state civil rights legislation.[11] One of these petitions was presented by John W. E. Thomas who had chaired the 1883 Convention and had become the first black man to serve in the Illinois Legislature. On February 5, Thomas introduced a civil rights bill into the Illinois House.[12] It was sent to the Committee of the Judiciary where on March 12, it was reported with one major amendment. This amendment strengthened the bill by fixing the civil damages at not less than twenty-five dollars nor more than five hundred dollars. The original bill stated that it should not exceed twenty-five dollars.[13]

An examination of the bill shows that it was modeled after the Ohio Civil Rights Laws (and therefore also the 1875 federal bill) with the exception that the preamble and the jury section were deleted. The civil and criminal penalties were however much stronger in the maximums that

[11]Illinois, Journal of the House of Representatives of the Thirty-fourth General Assembly of the State of Illinois (1885), 445, April 2, 1885.

[12]Illinois, Journal of the House, 113, February 3, 1885.

[13]Ibid., March 15, 1885, p. 394.

were established. While the Ohio law established a one hundred dollar maximum forfeiture and a one hundred dollar fine or a thirty day jail sentence or both, the Illinois law set a maximum five hundred dollar forfeiture and five hundred dollar fine or one year imprisonment or both. Illinois like Ohio contained the "proviso" which placed limitations on the scope of the bill. As previously stated this was more liberal than the similar proviso in the federal act.

The bill was debated on the morning of April 3. The debate was apparently of some length though the newspaper accounts of the substance was rather sketchy. The Chicago Tribune stated that "/the/ discussion did not assume a partisan phase although the opponents of the measure were mainly Democrats."[15] Newspaper accounts list five speakers who favored the bill (three Republicans and two Democrats). These accounts suggest that these men supported the bill out of a general sense of justice. James M. Dill, a Democrat, gave the principle speech in which he maintained that the bill was "an act of justice" and "in the interest of the poor and downtrodden of all races."[16] He answered those who believed that such a law would be worthless, by maintaining that if this were true it could do no harm.

[14]Illinois, Laws of the State of Illinois (1885), p. 64.

[15]Chicago Tribune, April 3, 1885.

[16]Ibid.

> He believed in the declaration of principles it made, and wherever and whenever those principles were violated he believed in having a remedy, a method of punishing, its violators.[17]

Another Democrat speaker in support of the bill was Speaker of the House, Elijah Haines. Haines stated that "everyone seemed to be in favor of the declaration of principles the bill made, but nobody seemed to be in favor of the remedy given to enforce them. He was in favor of both."[18] The newspapers cited a group of Democratic Representatives who did maintain that they supported the bill "in principle." The acceptance of the principle that it was unlawful for people to practice racial discrimination in inns, restaurants, barber shops or public conveyances seems to have been a significant concession itself.

These supporters of the bill "in principle" based their objections on the civil damages it imposed. "Mr. Shaw (Democrat) talked against it going over the ground that all its opponents made, that a bad use would be made of it by bad men."[19]

> Messrs. Linegar and Johnson [both Democrats] advocated the principles of the bill, but said the penalties imposed especially relating to civil damages would give occasion for blackmailing schemes against railroads and hotel keepers.[20]

[17] Chicago Inter-Ocean, April 3, 1885.

[18] Ibid.

[19] Ibid.

[20] Chicago Tribune, April 3, 1885.

All three of these men ultimately voted against the bill.

While one group of Democratic Representatives supported the bill and another claimed to support it "in principle" another group were totally opposed. Representative Cherry opposed the bill in principle. "He believed in the one great law of the survival of the fittest."[21] Apparently this meant that state made laws could not make an "inferior race" the equal of the white race, and government should let nature take its course.

The newspaper accounts offer little insight into motives of the Republican Representatives. It was reported that Representative Thomas gave an explanatory speech on his bill, but the papers seemed to be more concerned with how he spoke than what he said. Because of the newspapers' silence, the degree of Republican idealism in the House cannot be measured. The Republican support, however, can be measured by examining the roll-call vote on the bill. The bill passed eighty-three to nineteen. Sixty-nine of the House's seventy-six Republicans voted for the bill with none in opposition. The Democratic position was not as clear. Fourteen Democrats, including the Speaker, supported the bill, while nineteen opposed it and the remainder of the seventy-seven Democrats did not vote.[22]

[21] Chicago Inter-Ocean, April 3, 1885.

[22] Illinois, Journal of the House, 447, April 2, 1885.

The bill was presented to the Senate for debate on April 23 without being referred to a Senate committee. Senator Erastus Rinehart (Democrat) did move to refer the bill to the Committee on Horticulture: "It was the only smelling committee that the Senate had in its service."[23] The fact that ten Senators supported this move seems to represent the tone of the debate.[24] The newspaper accounts suggest that the debate was heated and sarcastic, but no serious argument appeared in the papers. The Chicago Tribune stated that "after a number of alleged funny speeches the bill was passed on third reading."[25] The Chicago Times stated that the bill's vocal opponent Senator Rinehart proposed an amendment providing that where hotels were crowded and patrons compelled to sleep two in a bed, any person found raising an objection would be fined one thousand dollars. "'Less buncombe in his amendment than the bill itself,' Rinehart said."[26] The Senate Democrats were apparently more vocal in their opposition than the House members. The Republican Illinois State Journal maintained that the Democratic party was clearly in opposition to the bill.

[23]Illinois State Register, April 24, 1885.

[24]Illinois, Journal of the Senate, 631, April 23, 1885.

[25]Chicago Tribune, April 24, 1885.

[26]Chicago Times, April 24, 1885.

> The Thomas civil rights bill worried quite a number of the Democratic Senators yesterday. . . . The Democrats with the exception of two or three put themselves on record as against the bill. . ... A few were shrewd enough to keep from going on record against it.[27]

Though this statement could be partially attributed to partisan behavior on the part of the Journal, it is noteworthy that this assertion was not challenged by the Journal's rival, the Illinois State Register, which was usually quick to correct any Journal errors.

The bill remained in the Senate until June 3 when it was finally passed by a thirty-seven to six vote. Again the Republicans unanimously supported the bill and the Democrats divided their votes. Thirteen Democrats (including three who supported Rinehart's sneering amendment) voted yes while six voted no.[28]

The evidence seems to suggest that a large segment of the Democracy was placed in an awkward position by the bill. The insistence by some that they supported the bill in principle, and the reluctance of some Senators to vote against a bill they spoke against in debate are manifestations of this position. A large number of absentees, forty-four out of seventy-seven in the House, also emphasizes this awkwardness.

Though many Democrats were apparently very cautious in

[27]Illinois State Journal, April 24, 1885.

[28]Illinois, Journal of the Senate, 632, June 3, 1885.

their approach to the bill, there did not seem to be much public reaction to its passage. The newspapers examined were generally crammed with information concerning the legislature, but little mention was made of the Civil Rights Bill. No newspaper editorialized on the bill. The Negro population did, according to the Danville Daily News, "hail with joy" the passage of the act, but the Daily News went on to state that there was a general consensus in the white population that the law would be evaded.[29]

> Nearly all those spoken to declared that they could not admit colored people to the same privileges for the same money that white people enjoyed, as it would ruin their business on account of the prejudice existing. . . . The opinion was general that the law was unnecessary and likely to give trouble without achieving its ends.[30]

Though the impact of the bill can be questioned, the quantitative evidence would seem to indicate that the Republican party was solidly committed to civil rights legislation, but did not have the political power to pass it by themselves. Credit must be given to the minority of the Democrats who gave the bill their support. They apparently did not interject blatantly partisan motives into their support of the bill. They accepted this Republican sponsored bill and did not attempt to introduce a rival Democratic bill. Though the actions of some of the Democrats

[29] Danville Daily News, June 5, 1885.

[30] Ibid.

seems to indicate that the legislators were well aware of the possible political significance of the bill, Illinois was spared the political bickering over who would get credit for passing the bill which marred passage of other civil rights bills. The passage of the Illinois Civil Rights Act seems to have been due to a genuine commitment on the part of the Republicans and the minority of the Democrats to insure that equal rights would continue to have the same legal protection that it had while the Federal Act was in operation.

CHAPTER IV

THE RESPONSE IN NEW JERSEY

New Jersey in 1884 was in a situation similar to that of Illinois in 1885 in that each major party had control of one house of the legislature. In New Jersey as in some other states (Connecticut, New York, Indiana, Ohio, Illinois and Pennsylvania) the Negro vote was very important. The fact that New Jersey had the highest percentage of Negroes of any Northern state probably however added to the importance of this block of voters. From a strictly political standpoint it is not surprising therefore that New Jersey would be among the states to enact legislation in the wake of the Supreme Court's decision.

The civil rights question in New Jersey produced some very snarled legislative history. On January 8, 1884 "A bill to protect all citizens in their civil and legal rights" was introduced into the Senate by Republican William Stainsby as Senate Bill No. 1.[1] The following day in the General Assembly, John Armitage, a Democrat, also introduced a civil rights bill.[2]

[1]New Jersey, Journal of the 40th Senate of the State of New Jersey (1884), 22, January 8, 1884.

[2]New Jersey, Minutes of Votes and Proceedings of the 108th General Assembly of the State of New Jersey (1884), 61, January 9, 1884.

An examination of the two bills is interesting. The Stainsby Bill directly copied all portions of the federal law with the exception that the proviso was deleted.[3] The Armitage Bill also copied the first and second sections of the Federal Law though it added the preamble and dropped the "jury section." The proviso was also dropped from this bill.[4] Since the proviso was dropped and therefore both criminal and civil penalties could be imposed, the two New Jersey bills were stronger than the Federal Act.

The press indicated that the legislative action was a response to the decision of the Supreme Court in overturning the Supplementary Civil Rights Act. The Trenton Times stated that "it is a civil rights bill, intended to take the place in New Jersey of the National one, which the Supreme Court has ruled unconstitutional."[5] The Newark Evening News also suggested that the bill would make the "old civil rights law" applicable under the laws of New Jersey.[6] Though other states made similar claims, the New Jersey response was clearly the strongest state response in the 1884-1885 wave of civil rights legislation.

The Stainsby Bill had apparently little difficulty in

[3]New Jersey, Acts of the One Hundred and Eighth Legislature of the State of New Jersey (1884), p. 339.

[4]New Jersey, Assembly bill, No. 14 of the 108th General Assembly, New Jersey State Library Legislative File.

[5]Trenton Times, January 9, 1884.

[6]Newark Evening News, January 9, 1884.

the Republican dominated Senate. The only delay involved deciding whether or not to include cemeteries in the bill. This was initiated when Democratic Governor Leon Abbett sent a special message to the legislature after the Hackensack Cemetery Company refused burial to a black man. Governor Abbett stated:

> It ought not to be tolerated in this State that a corporation whose existence depends upon the legislative will, and whose property is exempt from taxation because of its religious uses, should be permitted to make a distinction between the white man and the black man.[7]

Though cemeteries were not included in the bill, a separate piece of legislation was introduced and passed March 19, 1884.[8] It is interesting that a Democratic Governor would propose and a Democratic Assembly would pass something that the United States Congress felt was too sensitive for inclusion in the 1875 Act. This may be an indication that politicians in New Jersey in 1884 were more responsive to the need for civil rights legislation than were the national representatives a decade earlier.

After the delay caused by the "Hackensack Cemetery controversy" the bill passed the Senate unanimously. It then was sent to the General Assembly.

The bill ran into rough going in the Democratic controlled Assembly. It was referred to the Committee on

[7] Trenton Times, January 29, 1884.

[8] New Jersey, Acts, p. 83.

Revision of Laws.[9] On February 28 the majority report of the committee was presented to the Assembly, which offered some serious amendments. While the original bill stated

> . . . that all persons . . . shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, public conveyances on land and water and other places of public amusement . . .[10]

the amended bill simply stated that "all persons shall be entitled to the full and equal enjoyment of all civil and political rights and privileges."[11] The committee amendment made the bill very vague and allowed for wide latitude in court interpretation. Also, in section two, the civil penalty was completely deleted and the criminal penalty clause was reduced greatly to a minimum fine of twenty-five dollars and a maximum of fifty dollars, and no jail sentence. The jury section was reduced from five thousand to fifty dollars.[12]

This majority report was challenged by two Republicans who presented a minority report identical to the original bill. The majority report was adopted by the Assembly on almost a strict party vote, twenty-eight to twenty-four.

[9]New Jersey, Minutes, 174, January 29, 1884.

[10]New Jersey, Acts, p. 339.

[11]New Jersey, Senate Bill No. 1 /Re-printed with Amendments/ of the 108th General Assembly, New Jersey State Library Legislative File.

[12]Ibid.

The Democrats supplied all the votes in favor of the amendment, while twenty-three Republicans and one Democrat opposed it. Six Democrats (including Armitage) and two Republicans were present but did not vote.[13]

The Democrats had weakened the Stainsby (Republican) bill but wnen the Armitage bill, which was very similar with the exception of the deletion of the jury section, was presented on March 19 they gave it their support. It passed fifty-two to four.[14] The Newark Daily Advertiser, a Republican paper, accused Armitage of delaying the Senate bill which had priority and the support of the Republicans and some Democrats and forcing through his bill. This was done according to the Advertiser to aid his political prospects.[15] The same day, following the passage of the Armitage bill, enough votes were gathered to get the Stainsby bill recommitted to committee, this time to the Committee on Corporations.[16]

The Assembly Democrats' position in regard to the civil rights question resulted in Armitage being the recipient of a physical attack by a Republican hot head. It began when Assemblyman Rush Burgess maintained that no

[13]New Jersey, Minutes, 555, February 28, 1884, p. 555.

[14]Ibid., March 19, 1884, p. 806.

[15]Newark Daily Advertiser, March 19, 1884.

[16]New Jersey, Minutes, 813, March 19, 1884.

Democrat supported it from the heart. Armitage replied that he supported it from the heart and therefore Burgess lied. Burgess then struck Armitage.[17] Armitage's response to Burgess seemed to indicate that he objected to Burgess' reference to "no Democrat." Armitage did not try to defend his party's position, but only attempted to show that he was "a Democrat" who was sincere in his support.

Many Democrats probably followed Armitage for partisan reasons, but they were not alone. When the bill reached the Senate the Republican Senators also seemed to have reacted in a partisan manner. Armitage's bill differed from the bill the Senate had already passed only in the exclusion of the "jury section" which would seem to be of minor importance since it was including that portion of the Federal Act sustained by the Supreme Court. When the Armitage bill reached the Senate, however, no action was taken. The Trenton Times observed that "/if/ the Assembly and Senate keep on bandying Civil Rights bills back and forth the negro is in danger of not getting his rights at all."[18]

Finally in the face of a stalemate the Assembly acted. Toward the end of the session (April 15) the Stainsby bill in its original form was called up by Armitage who blasted the Republican Senate for ignoring his bill "despite the

[17] Trenton Times, March 20, 1884.

[18] Ibid.

many professions which Republicans were making for the colored man."[19] The bill then passed forty-two to five.[20]

New Jersey's action in civil rights legislation stands out not only for the high degree of political manuevering, but more importantly for the strength of its law. Why the New Jersey law was so strong is hard to determine. The political balance of the two parties and the strength of the black vote were obviously important factors in the passage of the bill. The political power wielded by John Armitage, who for whatever motives, supported a strong bill, was also however a factor. Also some of the Democrats may have been eager to show that their opposition to the federal law was out of a sincere dedication to states-rights and not out of any racial antipathy.

In 1874 and 1875 when the issue was a federally controlled civil rights act, New Jersey's Democratic Senator John P. Stockton was one of the strongest critics of the act. He maintained that his colleague, Frederick Frelinghuysen, in supporting the bill was acting contrary to the wishes of the people of New Jersey.[21] In 1884, however, when the issue was removed from federal jurisdiction and

[19]Ibid.

[20]New Jersey, Minutes, 1115, April 15, 1884, p. 1115.

[21]U.S., Congress, Congressional Record, 43rd Cong., 1st Sess., 4146, May 22, 1874.

became solely a state matter, a law stronger than the federal law was enacted by the state legislature. Even though the shift from federal to state jurisdiction is extremely significant, the contrast between 1874 and 1884 is striking. It seems to show that concern for the black man, for his rights and his political support, did not die with the end of the Reconstruction Era.

CHAPTER V

THE NEW ENGLAND RESPONSE IN CONNECTICUT AND RHODE ISLAND

It is not surprising that New England with its long tradition of enlightened leadership and concern for the rights of man would respond to the call for protection of civil rights after the destruction of the federal act. Massachusetts had been in the vanguard in civil rights legislation. Boston had prohibited separate schools in 1855 after the famous Roberts Case and the state established the nation's first civil rights act in 1865. In 1884 Connecticut joined her by passing a civil rights act and a year later Rhode Island also passed civil rights legislation.

Both these latter states were under the control of Republican legislatures. The Connecticut Legislative Journal lists fifteen Republicans to eight Democrats in the Senate and one hundred and fifty-three Republicans and ninety-five Democrats in the House.[1] No such concrete conclusions could be obtained about Rhode Island but the evidence seems to indicate that the Republicans were also in control in that state. Of the legislators whose political affiliations could be identified, the vast majority were

[1]Connecticut, Journal of the House of Representatives of the State of Connecticut, January Session (1884).

Republicans. In the seventy-two member General Assembly, twenty-five could be identified as Republican while two were Democrats. In the thirty-six member Senate, fifteen Republicans and four Democrats could be identified.[2]

Though New England was the fountainhead of the civil rights movement, the reaction to the Supreme Court's decision as it was reflected in the Connecticut and Rhode Island newspapers examined was much the same as the nation's general reaction.[3] The Republican Providence Daily Journal stated that the "constitution of the United States does not say that the social status of the citizens of the several states is within the authority of Congress to decree."[4] In the course of chiding straying Negroes and daring the Democrats to act, the paper described the course of action that it believed should be followed to insure the protection of equality of rights.

> The colored people who have been so anxious to sell themselves to the Democratic party for a mess of pleasant promises, will soon have an opportunity to test the sincerity and value of their new found friends. Will the Democratic party come up squarely and aid the Republicans in engrafting the principles

[2]Rhode Island, Manual with Rules and Orders for the Use of the General Assembly of the State of Rhode Island (1884-1885), pp. 261-264; Ibid. (1885-1886), pp. 279-298.

[3]Massachusetts' press reaction is not incorporated into this study because Massachusetts (as in the case of New York and Kansas) already had a state civil rights law.

[4]Providence Daily Journal, October 16, 1883.

> of the civil rights act upon the Constitution of the United States. We shall see.[5]

The Republican Hartford Courant, though supporting the Court's decision, expressed regret over it:

> The colored people of the Country have as a class never made an offensive use of their civil rights as covered by this act, and the cases where accommodations have been refused to them have been exceptional. We regret that the judicial authority of the land has felt it a duty, devoid of all prejudice, to wipe out of existence a law which for nearly ten years has been a testimony on the part of the American people of their sincerity in demanding equal rights for all men.[6]

The Courant did not believe that the law had ever been effective or could be effective, since only time and knowledge could stop discrimination. It believed that the Negro "enjoys everywhere the same equality before the law that the white man enjoys. He enjoys all the protection he can get under the constitution."[7] In referring to the protection of Negro rights in the South, the Courant made it clear that it believed that no inequality before the law existed in Connecticut.

> /We/ hope and expect that in the new movement of the South, industrial and educational, and that in its awakened recognition of humanity, the negro in Georgia will need no more special protection than the negro in Connecticut; in short that he will have exactly the same position before the law in each state that a white man has.[8]

[5]Ibid., October 17, 1883.

[6]Hartford Courant, October 16, 1883.

[7]Ibid., October 24, 1883.

[8]Ibid., October 19, 1883.

The Democratic New Haven Register also strongly supported the Court's ruling, insisting that such legislation, if enacted at all, must be enacted by the states.[9] A week later the paper printed a letter from a black man stating that no special legislation was needed or desired.[10]

Other Negroes were not however so content. Negroes in Norwich, Hartford and New London began to organize for a state convention. The convention was held on December 27, 1883 in Norwich, Connecticut. The Chairman, Walter H. Burr, stated that the purpose of the convention was to "prepare and present to the Legislature of the State resolutions for the protection of the colored people in their social, civil and political rights."[11]

> The colored people have the balance of political power in this State, and the dominant /Republican/ party must walk straight or the parties will change. . .[12]

Burr continued:

> The sincerity of the next Legislature is to be tested upon the question of civil rights for the colored people. The intention of this organization is to arouse the colored citizens of the State to a realization of their strength and for a united effort for their rights.[13]

[9] New Haven Register, October 16, 1883.

[10] Ibid., October 23, 1883.

[11] New York Globe, January 5, 1884.

[12] Ibid.

[13] Ibid.

Even at this convention, however, there were doubts about the value of state legislation. George Jeffries voiced his reservations as to the effectiveness of civil rights legislation.

> I have no objection to the placing of such a law on the statute books of the State, but if you cultivate thrift, intelligence and virtue you will lift yourself to the position you covet. It is impossible for legislation to legislate you into the heart of a single citizen.[14]

Though Chairman Burr threatened the Republican party, the convention maintained an orientation toward this party and only wished a return to its earlier ideals. The New York Globe reporter stated that Jeffries made "a splendid speech for the Republican party which he did to the credit of himself and the full satisfaction of all his hearers."[15] Also F. S. Jones introduced a resolution which stated that the convention "recommend a strict adherence to the principles of the Republican party as the only means of obtaining our civil and political rights."[16] It is difficult to determine if this was an affirmation of faith in the Connecticut Republicans or a warning that they had better return to their principles. In passing the resolution, however, the convention clearly showed a desire to work within the Republican party.

[14]Ibid.

[15]Ibid.

[16]Ibid.

A petition was then approved for delivery to the Connecticut legislature. The petition made two points: first, that the Supreme Court's decision would place the black man in a very awkward position because it subjected him to "great prejudices" without the redress that the Civil Rights Act provided; secondly, the petition emphasized that the Supreme Court had reserved this type of civil rights legislation for the states and that the State of Connecticut should act to insure these rights.[17]

It is of course impossible to determine the support the convention had within the black community. The New York Times was of the opinion that "the colored people here were not, as a rule, in sympathy with the convention, not believing in the efficacy of legislative action."[18]

Though the black demand for civil rights may be somewhat debatable, the legislature did react to the need for legislation. The original Connecticut Civil Rights Bill was introduced by a Democrat, Representative William Noble.[19] The Noble bill was very vague and also very weak. The bill made it unlawful for any agent of any person, corporation or community that enjoyed any rights, privileges or immunities from the State to discriminate on ground of nativity

[17]Ibid.

[18]New York Times, December 31, 1883.

[19]Connecticut, Journal of the House, 260, February 8, 1884.

or color "in matters of rates of freights, fares or accommodation."[20] The scope of this bill was apparently limited to the area of transporation. Section two of the bill states that the act only applied to civil damages and offered no criminal penalty.[21] Since it was argued by many that the black people already had a remedy in civil action for damages under common law without any legislation, this law (with a very low minimum fine of twenty-five dollars) would have little impact. A weak law with only civil penalties may, however, have been better than no law and reliance on the common law remedy. Under the common law the plaintiff had to prove that physical (or in some jurisdictions mental) injury was committed, while under the law only discrimination had to be proven.

The Noble bill was referred to the Committee of the Judiciary which was under Republican control. Though no record of the Judiciary Committee's deliberations has survived, three "letters to the editor" in the New York Globe do supply some information. Hearings were held and members of the black community appeared before the Committee. Two substitute bills were presented by blacks to the Committee, though the substance of both are unknown. One of the bills was supported and possibly proposed by J. A.

[20]Connecticut, House Bill 206 (1884), Connecticut State Library Legislative File.

[21]Ibid.

Rambie, secretary of the "Norwich Convention."[22] Another bill was drawn up by George T. Downing of Rhode Island.[23] William Case, Chairman of the Judiciary Committee, however, drew up a separate bill. The bill met the approval of the New York Globe's correspondent, Charles H. Thomas. He said:

> I told them [the Judiciary Committee] it was a people's bill and that I heartily approved of it. . . . I did not want a bill passed to protect me as a colored man but one that would protect me as a man, as it did other American citizens.[24]

The committee bill with one amendment changing "inhabitant of the State" to "person" was presented to the House of Representatives and passed on March 25.[25] It passed the Senate on March 27.[26] The legislative journal did not report the vote, but Thomas' letter stated that the vote was unanimous.[27]

The final bill was as follows:

> Every person who subjects or causes to be subjected, any other person to deprivation of any rights, privileges, or immunities, secured or protected by the Constitution or laws of this State,

[22]New York Globe, March 29, 1884.

[23]Ibid., April 19, 1884.

[24]Ibid.

[25]Connecticut, Journal of the House, 649, March 25, 1884.

[26]Connecticut, Journal of the Senate of the State of Connecticut, January Session (1884), 626, March 27, 1884.

[27]New York Globe, April 19, 1884.

> on account of alienage, color or race, shall be fined not more than one thousand dollars, or imprisoned not more than one year or both.[28]

It is obvious that the federal law was not the model for this act. It is a broad law which seems to give a great deal of discretion to the courts. The rights, privileges and immunities protected were not defined. The legislature allowed the courts to define the law as restrictively or liberally as they saw fit. Also by setting a high maximum of one thousand dollars and/or one year imprisonment and no minimum penalty the courts were given another area of wide latitude. The law was stronger than the federal act at least in one way, it protected "any person" and was not restricted to "any citizen." In contrast to the Noble bill, the final bill imposed only criminal and no civil remedies. It did not, however, bar a person from proceeding under their common law remedy. Thus an individual could be prosecuted for violating the state law and also be subjected to civil damages.

The impact of the passage of the bill seems to have been small. The Hartford Courant made no comment upon the bill other than that it passed.[29] The Hartford Times stated that the bill passed without debate and maintained, inaccurately, that it "is practically a copy of the U.S.

[28]Connecticut, General Statutes of Connecticut (1888), p. 327.

[29]Hartford Courant, March 28, 1884.

/federal/ law."[30] The New Haven Register seemed to summarize the lack of interest in the bill. Under the heading "Duller at Hartford" it stated "the Senate as well as the House recognizes all races and colors . . ."[31] The Senate concurred in the passage of the bill fixing a fine of $1,000 or a year's imprisonment for the deprivation of any rights because of race or color.[32] Though the paper failed to understand or at least report that these were the maximum penalties it does seem remarkable that a Democratic paper could so dispassionately report such a bill.

An effort was also apparently made in Rhode Island to pass a civil rights bill in 1884. It passed one house but failed to pass the other.[33] The following year, 1885, another effort was made to pass a civil rights bill for Rhode Island. Again, as in Connecticut, George Downing played a role in the civil rights bill. He proposed a bill and urged that the house Democrats support it. They did and the bill was passed unanimously on March 12.[34] It maintained that "no person" should be debarred from the equal enjoyment of "licensed inns, public conveyances on

[30] Hartford Times, March 28, 1884.

[31] New Haven Register, March 28, 1884.

[32] Ibid.

[33] New York Freeman, February 7, 1884.

[34] Ibid., March 21, 1885.

land and water or any licensed places of public amusement on account of race, color or previous condition of servitude." The second section provided a civil penalty of one hundred dollars and a criminal penalty of from one hundred to five hundred dollars. A "jury section" was included which also established a one hundred to five hundred dollar fine.[35]

Representative Gorman maintained that this bill was a direct result of the United States Supreme Court's decision that civil rights was a state matter, not within the jurisdiction of the federal government.[36] Representative Miller did not think the Negro had been deprived of his rights, because the State had been under the control of the "party which freed the colored man and gave him his civil rights" but if it were true it was shameful and he would support the bill.[37]

When the bill reached the Senate that body refused to concur with the House. The Senate on April 23, against the wishes of the Judiciary Committee, amended the bill by striking out all after the first section and thus completely emasculated the bill.[38] Senator Eames, who presented the

[35] Providence Evening Bulletin, March 12, 1885.

[36] Providence Daily Journal, March 13, 1885.

[37] Ibid.

[38] Providence Evening Bulletin, April 23, 1885.

Judiciary Committee's recommendations, stated that the provisions in the original bill were necessary, that no harm could come by retaining them, and also that "the parties most interested" asked that the provisions be retained.[39] Republican Senator John Gregory responded to Eames. He objected to the passage of the bill "just because certain people had requested it."[40] Gregory went on to cite his objections to the second and third sections. He maintained that under the bill "the party injured could only get damages to the amount of $500 and his injuries might demand far greater damages, which he would be unable to claim."[41] While the Senator was theoretically correct, it would seem that more protection against discrimination was provided by the limited civil damages clause and the more significant criminal provisions (which Gregory failed to mention) than by reliance only on the application of the common law remedy. Gregory also charged that the third "jury" section implied that the State of Rhode Island had in the past prohibited black participation on juries, which he claimed was not true.[42]

The House refused to support this Senate version of the bill. A conference committee was set up consisting of

[39]Ibid.

[40]Ibid.

[41]Ibid.

[42]Ibid.

Gregory, another Republican and a Democrat from the Senate and three Representatives (at least two of the three were Republican).[43]

On the last day of the session the conference committee presented their compromise bill to the General Assembly. The compromise bill removed the civil damages and reduced the fine to a maximum of one hundred dollars. Also the "jury" section was retained, but the penalty for violating it was reduced to a maximum fine of one hundred dollars. The bill in this form passed both houses.[44]

Though Connecticut's law was vague and set a high maximum penalty while Rhode Island's law set low maximums and was more clearly worded, both laws have some features in common. Both laws protected "all persons" and are not restricted to only citizens. Also, and more importantly, both laws are strictly criminal laws. They apply only criminal penalties, while not interfering with the common law remedy. The criminal sanctions could apply without interfering with the individual's right to civil damages. This can be contrasted to the laws of the Ohio Valley states of Ohio, Indiana and Illinois and the old federal laws which were criminal only to a limited degree. Only if the injured party did not receive civil damage could a criminal

[43]Ibid.

[44]Rhode Island, Public Laws of the State of Rhode Island (1885), p. 256.

proceeding take place. Though both New England laws had their limitations, and were not as strong as the New Jersey law, these Republican dominated legislatures did strengthen the criminal penalty feature of the old civil rights law.

CHAPTER VI

THE RESPONSE IN THE REPUBLICAN WEST

Five other states passed civil rights legislation during this period. Iowa passed a law in 1884 and Nebraska, Colorado, Minnesota and Michigan followed when their first "post-decision" legislative sessions were held in 1885. All of these states had some characteristics in common. They were all mid-west or western states which voted solidly Republican. They all also had extremely small black populations.[1] For this reason they will be studied to try to determine how these states, saturated with Republican ideology and not dependent upon the support of blacks to supply the balance of power, reacted to the striking down of the Civil Rights Act.

Minnesota

In Minnesota, the influential Republican paper, the St. Paul Pioneer Press, fully supported the decision. The Pioneer Press maintained that besides being unwarranted by the Constitution, the Civil Rights law was not and could not enforced.[2] The paper acknowledged after the decision was

[1]U.S., Bureau of the Census, Tenth Census of the United States, 1: Table XX, xxii.

[2]St. Paul Pioneer Press, October 17, 1883.

announced that there was a need to correct the "grave injustices" of racial discrimination, but it was doubtful that anything that anything but time could cure prejudice.[3]

> It is doubtful if the agitation [for a constitutional amendment] will have strength and vitality enough to accomplish so complex and weighty a change as this. It is doubtful, too, if the direct pressure of legislative enactment will be so effective for the cure of the injustice as the gradual growth of a more rational and just public sentiment.[4]

Though Congress responded about the way the Pioneer Press predicted, when the Minnesota legislature met in 1885 a civil rights bill was introduced by Republican Senator C. D. Gilfillan. The Pioneer Press endorsed the bill stating that it was in the interest of the colored people of Minnesota.[5]

The debate on the bill was apparently lengthy.[6] The Pioneer Press briefly reported some of the substance of the debate. Two Republicans (Castle and Rice) voiced opposition, while another Republican (Hickman) maintained that "the race had a right to redress."[7] The bill's sponsor, Gilfillan, "hoped that the question would come to a fair and square"[8]

[3]Ibid.

[4]Ibid.

[5]Ibid., January 28, 1885.

[6]Ibid., February 21, 1885.

[7]Ibid., February 19, 1885.

[8]Ibid.

vote. Gilfillan's fear of an attempt to dodge the question was realized in an amendment proposed by Democratic Senator Craig. This amendment struck out all of the bill after the preamble. The effort to pass this "toothless" declaration of principles was narrowly defeated, seventeen to thirteen. Though the action on this amendment was not recorded in the Senate Journal the Pioneer Press maintained that "party distinctions were not apparent."[9] The bill was then voted upon. The roll-call indicates that the vote divided basically along party lines with Republicans supporting it twenty-five to three, while the Democrats opposed it seven to two.[10] If the Pioneer Press was correct in its comments on the Craig Amendment, the roll-call would suggest that several Republicans would have preferred to have the bill be only a mild and general declaration of principle. When the question was, however, should there be a civil rights act, they voted aye. The bill then went to the House of Representatives where it passed overwhelmingly (though the voting was light), fifty-nine to six. The bill received about the same percentage of each party's vote.[11]

[9]Ibid.

[10]Minnesota, Journal of the Senate of the 24th Session of the Legislature of the State of Minnesota (1885), 331, February 21, 1885.

[11]Minnesota, Journal of the House of Representatives of the 24th Session of the Legislature of the State of Minnesota (1885), 606, March 5, 1885.

The Pioneer Press stated that the bill was "an exact copy of the Ohio law," but an examination of the Minnesota law shows this not to be the case.[12] It was very similar in general form and had the same list of protected rights but there were major as well as minor changes. One major change was in the penalties imposed. The Ohio law had a maximum criminal penalty of a one hundred dollar fine, while Minnesota had a minimum one hundred dollar and a maximum five hundred dollar fine. Also Ohio's law called for a maximum thirty days imprisonment, while Minnesota again established that as its minimum with a one year maximum. The Minnesota law, however, did forbid applying both the fine and the imprisonment. The Minnesota law was only a criminal law, no civil penalties were imposed so the common law remedy was still applicable.[13]

Though some Senators approached the law with a degree of reluctance, the bill that they passed was stronger than the Ohio model. It was stronger because a minimum fine or imprisonment was established and because criminal prosecution could be sought without affecting the possibility of obtaining civil relief (under the common law remedy).

[12]St. Paul Pioneer Press, January 28, 1885.

[13]Minnesota, Special Laws of the State of Minnesota (1885), p. 295.

Michigan

The Michigan newspapers surveyed also supported the Supreme Court's decision though they seemed to address themselves more squarely to the black man's situation. The Saginaw Courier suggested that the blacks were better off without the law, but if they insisted that they needed one they should pressure the state legislature rather than abuse the Supreme Court.[14] The Detroit News and Times maintained that the black "resentment is natural, but it is not reasonable."[15] It stated ". . . every average lawyer not blinded by partisanship has been able to see that the sentiment of the civil rights bill is not to be found any where in the fundamental law."[16] The Republican Detroit Post and Tribune expressed regret but supported the Court's decision. The civil rights law expressed the "intent and purpose of the nation . . . but this 'intent and purpose of the nation' had not been expressed within the scope of the Fourteenth Amendment."[17] The Post and Tribune went on to try to show that such a law was now unnecessary.

> Possibly it may be as well for the colored people that it should now be brushed aside. They /the Negro/ have grown strong, and do not need it. They have asserted their manhood in better ways than by

[14] Saginaw Courier, October 25, 1883.

[15] Detroit News and Times, October 17, 1883.

[16] Ibid.

[17] Detroit Post and Tribune, October 16, 1883.

> virtue of an act of congress and have attained a dignity which will hardly demand the protection of special legislation.[18]

There was a general lack of interest, however, on the part of the press when the Michigan civil rights bill, which had been introduced by Republican Representative Dickson on January 28, 1885, was finally acted upon by the legislature. For example, the Lansing Republican, a staunchly partisan paper, had nothing to say about the bill.

The bill, as originally proposed, was identical to the Ohio law of 1884 with the exception that the preamble and the proviso at the end of section two were deleted. The bill was debated in the House on April 17. Besides the opposition of at least one gentleman on purely racist grounds (i.e. "The God who created the races had made the distinctions and all the legislation in the world could not remove it") the debate centered on the civil penalties.[19] O. N. Case stated that his only grounds for opposition was the forfeiture of one hundred dollars established in the bill. "[This] was a direct incentive to litigation and would be against public policy."[20] The bill should be placed on the same footing as the criminal laws, with penalties of fine and imprisonment in Case's view. When Dickson alleged that the law was the same as the Ohio law, Representative

[18] Ibid., October 18, 1883.

[19] Detroit News and Times, April 17, 1885.

[20] Ibid.

Parkhurst disagreed. Parkhurst stated that the Ohio law contained a proviso barring a criminal proceeding if civil damages were received. "Such alternatives were common in penal statutes."[21] Though nothing more was reported in the press, the point must have been well received because a change was made. Instead, however, of adding the proviso, and weakening the criminal provisions, the civil penalties were removed from the bill.[22] The bill in this amended form easily passed the House fifty-six to four.[23] On May 27 the bill passed the Senate without opposition.[24]

Colorado

Colorado was also one of the states passing a civil rights act in 1885. Civil rights seems not to have been a question of much concern to the press of Colorado. The Civil Rights Cases Decision of 1883 and the state civil rights bill of 1885 were only reported briefly and factually by the press studied. Some interest must have been generated in the state, however, because several petitions were presented to the legislature advocating the passage of the

[21]Ibid.

[22]Michigan, Public Acts of the Legislature of the State of Michigan (1885), p.131.

[23]Michigan, Journal of the House of Representatives of the State of Michigan (1885), 1: 1103, April 17, 1885.

[24]Michigan, Journal of the Senate of the State of Michigan (1885), 1: 1056, May 27, 1885.

bill.[25] Though the bill received a long discussion by the legislature, it passed with practically no opposition.[26] The bill was passed in the Senate twenty-two to one on April 1, 1885.[27] It then passed in the House thirty-nine to one on April 3.[28]

An examination of the bill shows that it generally used the same phraseology as the federal act (via Ohio) though the preamble and "jury" section were excluded. A maximum five hundred dollars and/or three months imprisonment, in the discretion of the court, was established. As was the case in some other states, no civil penalties were imposed, making the law strictly a criminal law.[29] One other, very remarkable change was made in the law while it was in committee. Saloons were deleted from the enumeration in the first section and in its place was placed churches.[30] Including churches, a feature too controversial for the federal law in 1875, would seem to be a subject that could

[25] Colorado Springs Gazette, March 6, 1885; Ibid., March 13, 1885; Colorado, Senate Journal of the General Assembly, Fifth Session (1886), 997, March 18, 1885.

[26] Pueblo Chiefton, April 4, 1885.

[27] Colorado, Senate Journal, 1507, April 1, 1885.

[28] Colorado, House Journal of the General Assembly of the State of Colorado (1886), 1933, April 3, 1885.

[29] Colorado, Laws passed at the Fifth Session of the General Assembly of the State of Colorado (1885), p. 132.

[30] Colorado, Senate Journal, 997, March 18, 1885.

have generated a great deal of interest, but no evidence of much concern was found. The Colorado civil rights law apparently became law with little opposition.

Iowa

Iowa had long had a good reputation in civil rights matters. In 1868 the "Clark Rule" was established when the Iowa Supreme Court in Clark v. Board of Directors interpreted a state statute requiring that all children be entitled to the privilege of attending common schools to mean that school boards had no power to establish separate schools.[31] This rule was reaffirmed by the Iowa high court in 1875 in two cases, Smith v. Director of Keokuk and Dove v. Keokuk Board of Education.[32] In the field of public accommodations the Iowa Supreme Court was responsible for one of the strongest decisions in opposition to the "separate but equal" rule. In this 1873 case, Coger v. Northwest Union Packet Co., the Court ruled that to deny a black woman a seat at the "ladies table" of a common carrier was contrary to the 1866 Civil Rights Act (i.e. right to contract), common law and the laws of Christianity.[33]

With this type of legal history it would seem that

[31]Clark v. Board of Directors, 24 Iowa 266 (1868).

[32]Smith v. Directors of Keokuk, 40 Iowa 518 (1875); Dove v. Keokuk Board of Education, 41 Iowa 689 (1875).

[33]Coger v. Northwest Union Packet Co., 37 Iowa 145 (1873).

Iowa's reaction to the Civil Rights Cases decision would be strong. The Council Bluffs Nonpareil, a strongly partisan Republican newspaper, supported the Supreme Court.[34] It also denounced the black leaders who were blaming the Supreme Court and the Republican party of depriving them of their rights.[35] Though the Nonpareil believed the Civil Rights Act to be unconstitutional, it did see a need to protect civil rights.

> We believe however in the principle of the civil rights law. It may be unconstitutional for congress to meddle with the social status of the people within the states, but it is to be hoped that the republicans in every commonwealth, where the negro is deprived of his legal rights, will insist upon the passage of a civil rights law: that however should be done by the states and not by congress.[36]

While the Nonpareil supported the Supreme Court's position, another Republican paper, the Keokuk Daily Gate City expressed the strongest opposition to the decision of any white paper examined. The Gate City sarcastically commented that the Supreme Court said it was "no badge of slavery to refuse a colored man a square meal."[37] The paper thought the decision would make civil rights a political issue during the 1884 Presidential campaign and maintained that Negroes would have to organize themselves and become an

[34] Council Bluffs Nonpareil, October 17, 1883.

[35] Ibid., October 24, 1883.

[36] Ibid., October 30, 1883.

[37] Keokuk Daily Gate City, October 16, 1883.

independent political force.[38] The only Democratic paper examined, the Davenport Democrat, had little to say about the decision.

The Governor of Iowa, Buren Sherman, in his inaugural address called for state action to fill the void created by the overturning of the federal law:

> If it be true that the several acts of congress respecting this all important matter [civil rights] are not upheld by the courts and that because state action in denial of the application of the principle to all its citizens is first necessary to authorize the national government to affirmatively interfere, then I am in favor of such legislation in our own state as will secure these rights to every class of our citizens and determine their status beyond all question or doubt.[39]

The legislature did respond quickly. On January 22, 1884 Colonel Ballingale, a Democrat, introduced a civil rights bill in the Iowa House.[40] The following day Republican Senator Miles introduced another civil rights bill into the Senate.[41] The Council Bluffs Nonpareil while not mentioning the Miles bill, spoke of the Ballingale bill in a very partisan manner. "Colonel Ballingale of the Iowa House is seeking political renown."[42] Reacting to the Iowa State

[38]Ibid., October 17, 1883.

[39]"Governor Buren Sherman's Inaugural Address," Council Bluffs Nonpareil, January 19, 1884.

[40]Iowa, Bill No. 4, House File, Twentieth General Assembly, Iowa State Department of History and Archives.

[41]Iowa, Journal of the Senate of the Twentieth General Assembly of the State of Iowa (1884), 42, January 23, 1884, p. 42.

[42]Council Bluffs Nonpareil, January 24, 1884.

Leader's statement that "as usual, when any good thing is to be done the democrats are ahead," the Nonpareil replied "if they are ahead it's the first time. . . ."[43]

The Ballingale bill was a direct copy of the preamble and the first two sections of the federal law with the exception that the proviso at the end of section two was dropped.[44] The Miles bill was very similar to the federal with the exception that "citizen" was changed to the less restrictive "person," though the bill was entitled "An act to protect all citizens in their civil and legal rights."[45] Both bills were amended in committee.[46] The amendments to the House bill are unknown, but the Senate bill was significantly changed. The civil punishment provision was dropped and the amended bill failed to set a specific penalty stating only that the person be "deemed guilty of a misdemeanor."[47] Senator Miles moved to insert "barber shops" into the list of protected accommodations.[48] This was

[43]Ibid.

[44]Iowa, Bill No. 4, House File.

[45]Iowa, Bill No. 11, Senate File, Twentieth General Assembly, Iowa State Department of History and Archives.

[46]Iowa, No. 4, House File; Iowa, Journal of the Senate, February 29, 1884, p. 246.

[47]Iowa, Public Laws of the Twentieth General Assembly of the State of Iowa (1884), p. 107.

[48]Iowa, Journal of the Senate, 443, March 22, 1884.

adopted. The bill passed the Republican controlled Senate thirty-two to zero on March 22.[49] On March 25, the bill likewise unanimously passed the House (where the Republicans had a small majority).[50] With the Miles bill passed, the other civil rights bill was indefinitely postponed on March 27.

The Iowa press that was surveyed had little to say about the law. The Keokuk Daily Gate City only mentioned that the bill had passed.[51] The Council Bluffs Nonpareil only briefly stated that the bill had passed the Senate, adding incorrectly that the bill provided "a heavy fine for violations."[52] The Davenport Gazette carried a short editorial praising the passage of the bill.[53] The Iowa civil rights law seems to have generated little opposition or even interest.

Nebraska

Though the Iowa citizenry (as reflected by the newspapers examined) apparently showed little interest in their

[49]Ibid.

[50]Iowa, Journal of the House of Representatives of the Twentieth General Assembly of the State of Iowa (1884), 514, March 25, 1884.

[51]Keokuk Daily Gate City, March 23, 1884; Ibid., March 26, 1884.

[52]Council Bluffs Nonpareil, March 22, 1884.

[53]Davenport Gazette, March 22, 1884.

civil rights law, the law must have attracted the interest of some legislators in Iowa's neighboring state of Nebraska. A bill almost identical to the Iowa law was introduced into the Nebraska House of Representatives on February 4, 1885 by Republican John Wright.[54] The only significant difference was that the Nebraska bill established a fine of from twenty-five to two hundred dollars plus the cost of the prosecution.[55] Two weeks later on February 20 the Committee on Federal Relations reported the bill favorably.[56] On February 25 it passed the overwhelmingly Republican House unanimously.[57] The bill was presented to the Senate (also strongly Republican) and the following day referred to the Committee on Miscellaneous Subjects. The Committee's deliberations must have been rather brief, because the bill was reported that afternoon.[58] The bill passed unanimously on March 4, 1885.[59]

[54]Nebraska, House Journal of the Legislature of the State of Nebraska, Nineteenth Regular Session (1885), 492, February 4, 1885.

[55]Nebraska, Laws, Joint Resolutions, and Memorials Passed by the Legislative Assembly of the State of Nebraska at its Nineteenth Session (1885), p. 393.

[56]Nebraska, House Journal, 961, February 20, 1885.

[57]Ibid., February 25, 1885, 1023.

[58]Nebraska, Senate Journal of the Legislature of the State of Nebraska, Nineteenth Regular Session (1885), 628, February 26, 1885.

[59]Nebraska, Senate Journal, 644, March 4, 1885.

As was the case in the Iowa law, the title of the Act referred to the protection of citizens while the body of the law referred to "all persons within the State."[60] This proved to be a limiting factor. In a 1889 case, Messenger v. State of Nebraska, an attempt to apply this law to a barber was thrown out. An unanimous Nebraska Supreme Court ruled very narrowly that the purpose of the bill was in the title and though the authority of the state legislature to prohibit discrimination was undoubted, the remedy must be denied because it was not alleged and proven that the plaintiff was a citizen.[61]

The five mid-western and western Republican states of Minnesota, Michigan, Iowa, Nebraska and Colorado passed civil rights legislation with little apparent controversy, opposition, or even interest. The lack of controversy may have been due to a general acceptance of the idea of integrated facilities or to the belief that this was a general statement of principle of little practical significance. It does not seem likely that the legislators in these states acted for solely the political reason of appealing to black voters, because there were few black voters and these voters could not sway the outcome of most elections. It seems more reasonable that the legislators were acting out of an

[60]Nebraska, Laws, p. 363.

[61]Messenger v. State of Nebraska, 41 N.W. 638 (1889).

ideological commitment that the state should go on record as maintaining that certain discriminatory policies were criminal.

CHAPTER VII

CONCLUSION

In evaluating all the material available concerning the issue of civil rights in the 1883 to 1885 period the feature that is very evident is the lack of press interest in the issue. If the press can be used as a guide, civil rights legislation generated little controversy. The examination of the press in regard to the United States Supreme Court decision on the Civil Rights Cases showed that, in the states studied, the Supreme Court's opinion had overwhelming press support. The only exceptions were the black press and the Keokuk Daily Gate City. Several Republican papers expressed regret over the decision and feared the consequences of it, but they had no disagreement with the legal logic of Justice Bradley.

While most papers agreed that the question was a state matter, when their state legislatures responded with such legislation, the press gave it little, if any, coverage. In several instances the meager coverage included inaccurate information. The poor quality and quantity of information seems to indicate that the press did not feel the issue warranted the type of deeper coverage which was given to the more burning issues of the day.

The degree of press coverage was also exhibited in the three Negro newspapers examined. Though these papers had a great deal to say about the striking down of the Civil Rights Act and numerous other questions affecting black people, they too had little to say about the states' action in passing civil rights legislation. The Cleveland Gazette only referred to the action of the state of Ohio which, though viewed as better than nothing, was seen as a weak, politically motivated effort. The Washington Bee, which was at the time (February, 1884) a strongly partisan Republican paper, stated that it viewed such legislation very skeptically.

> The Democratic legislatures are passing civil rights bills as amendments to the blunders made by the Supreme Court . . . It is well for the colored people to guard against these recent democratic measures, as there will be all kinds of inducements to capture the colored vote. There will be measures introduced that will look as plausible as the principles of the Republican party which we know to be bait.[1]

The "legislatures" that the Bee was referring to probably was only Ohio (though it also could have included New Jersey where the Democracy controlled one house. While the Bee maintained that these "bills" were insincere and politically motivated, it went on to suggest that all such legislation was unnecessary.

> We don't ask for social equality. We know that social equality cannot be forced by legislation, and

[1]Washington Bee, February 16, 1884.

> all we ask is that we be given recognition according to merit. We ask for protection of the negro in the South. We ask for aid to educate the poor and half fed negro in the South. Give us this and let social equality work out its own destiny.[2]

Even T. Thomas Fortune in his newspaper the New York Globe (later called the Freeman and later still, the Age) had little to say about the civil rights legislation which was enacted. On April 15, 1884 the Globe mentioned the passage of the Connecticut law and then went on to state its position in regard to such legislation.

> This adds one more to the number of states which have adopted special legislation to secure to all classes of citizens common rights. While special legislation is to be deprecated on general principles, yet, if it is deemed necessary in order to place any class of citizens on an equal plane of citizenship with their fellows, it is manifestly proper that such legislation should be enacted by the sovereign States, as the general government has been proved a nullity in that respect.[3]

It is interesting to note that both Chase and Fortune seem to have accepted (at least to some degree) the old shibboleths of the opponents of civil rights legislation. These were phrases "social equality" and "special legislation." These bills were not designed to foster "social equality." They had nothing to do with one individual's private bigotries and superstitions. They were designed to strengthen the commitment to equality before the law by outlawing some public discrimination policies. Also it is

[2]Ibid.

[3]New York Globe, April 5, 1884.

difficult to see how such bills could have been labeled "special" or "class legislation" when no "class" was referred to in any of the bills. These terms still, however, were parrotted over and over again.

The lack of interest in this legislation shown by the press also seems to have been present in the black community. Blacks generally reacted bitterly to the Supreme Court's civil rights decision and believed that they had been betrayed. Some of these same people, however, reacted very little to the efforts of the states to protect civil rights. This lack of interest may have been nothing new. On December 29, 1883 the New York Globe mentioned what it called the little known New York Civil Rights Act (passed in 1873). The paper stated that "it may be that not one out of every ten colored people in this state are aware of it."[4] This lack of interest may have been due to the fact that it was felt that the laws were insignificant because of the low penalties imposed (as was the view expressed in the pages of the Cleveland Gazette in regard to the Ohio law). While these laws were significant in principle, they may have felt that they were of little practical value to the blacks. Also it was probably well understood by black leaders that great difficulties were involved in getting the laws understood by their fellow blacks and also in getting indictments

[4]Ibid., December 24, 1883.

and convictions under these laws.

In addition, like most Americans of the time, there was probably wide acceptance of the view that government could exert only limited power over society. The Negro reaction (or lack of reaction) may also be seen as part of a transformation of Negro thought, resulting from both the tenor of the time and the general feeling of black disillusionment over the course of events after emancipation. As was suggested in some of the remarks of black leaders presented in this paper, the older ideals of political action, assimilation, and equality were giving way to self-help, racial solidarity and economic advancement (a course which led to Booker Washington).

Though Americans may have been moving away from the ideals of the Reconstruction Era, the passage of eleven new civil rights laws shows that these ideals were not dead. According to modern standards these statutes reflect a rather mild commitment. In the degree of the penalties imposed only New Jersey's law equaled that of the old federal law. Eight of these states' laws, however, were clearly criminal laws, while the federal law and laws of Ohio, Indiana and Illinois were only criminal laws if civil damages were not won. The states where criminal laws were established were the politically balanced state of New Jersey and the seven Republican dominated states of Connecticut, Rhode Island, Michigan, Minnesota, Iowa, Nebraska and

Colorado. Though this would seem to be more than a coincident, it is difficult to determine any clear significance to these Republican laws. They (at least partially reacting to the cries of "social equality") may have been trying to make it clear that such discrimination was a crime directed against the state and all her citizens, and not just against individuals.

These laws were passed in response to the Supreme Court's overruling of the Civil Rights Act of 1875. Though the black press was little impressed with the legislatures' handiwork, the evidence seems to show that one of the motivations for passage of these laws was the desire to satisfy black grievances. This is particularly true in the states where the Democrats were strong enough to challenge the Republican party. Three Democratic papers, the Cleveland Plain Dealer, the Cincinnati Enquirer and the Kokomo Dispatch were eager to use the civil rights issue to try to strengthen their party's position with the black people. The Republican press, on the other hand, often tried to discount the Democratic commitment on the issue. The reported comments on the debates and the recorded roll-call votes on related issues show that many Democrats voiced and voted in opposition to civil rights, but were reluctant to vote against the final passage of the bills. The fact that many Democrats exerted such an effort to appeal to black voters would seem to be important. Instead of being

dedicated to strengthening their party by efforts to remove the Negro from the political scene, they engaged in a campaign to win these voters from the domination of Republican party. The Negro was not ignored by the northern politicians in the 1880's.

All Democrats were not, however, motivated by only political considerations. Several Democrats such as Hoadly of Ohio, Abbett and Armitage of New Jersey, Dill and Haynes of Illinois, and Thompson of Indiana seemed to show through their actions and words that they were sincere states-rights men who believed they had a responsibility to protect citizens' rights. There were probably numerous other men who thought similarly but whose motives are lost because of the scarcity of records.

Though the Republican party was also concerned with partisan considerations (as witnessed in the New Jersey's Senate action on the Armitage bill) the spirit of the old Radical Republican ideological commitment to equality before the law was consistently maintained by words and deeds in the legislatures. The fact that five of these Republican states passing the civil rights law had less than a one percent black population is significant. The laws were of little political significance and were probably passed solely, as Governor Sherman of Iowa said, "/to resolve the

question/ beyond all question or doubt."[5] The rapid passage of eleven civil rights laws in the wake of the Supreme Court Civil Rights Cases decision shows that the ideals of the "Reconstruction Era" were not completely forgotten by the politicians of the 1880's. Also the Negro in the 1880's was not completely erased as a political force in America. America may have entered what John Hope Franklin has called the "long dark night" of race relations, but at least a flicker of light still remained.

[5] Council Bluffs Nonpareil, January 19, 1884.

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