THE ROLE OF LAW IN THE MAKING OF RACIAL IDENTITY:
THE CASE OF HARRISBURG'S W. JUSTIN CARTER

Kenneth W. Mack*

In 1894, W. Justin Carter moved to Harrisburg, Pennsylvania and became only the second black lawyer to practice there. From an unlikely beginning as the son of former slaves, and in this unlikely city, Carter would soon become one of the foremost lawyers in his state. Living in the small city of Harrisburg, he established a diverse clientele and gained respect in both black and white communities. He was one of the early leaders of the National

* Professor of Law, Harvard Law School. This article is based on the ideas that I expressed in the 2008 Annual John Gedid Lecture at Widener University. I would like to thank Calobe Jackson, Jr., Francis B. Haas, Jr., and Donald Morgan, who graciously shared their research on W. Justin Carter with me, and Colleen Harrison for providing invaluable research assistance. I would also like to thank my friend and former colleague, Professor Wesley M. Oliver, as well as Vice-Dean John L. Gedid and Dean Linda Ammons, of Widener Law School for facilitating my return to my hometown to deliver the lecture. This article is dedicated to my former teachers in the Harrisburg School District, who helped open my eyes to the city as a place of possibility.

1 FITZHUGH LEE STYLES, NEGROES AND THE LAW 153 (1937); William Justin Carter, 32 J. NEGRO HIST. 396, 396 (1947).

Association for the Advancement of Colored People (NAACP)\(^3\) and was appointed by President Taft to serve as a delegate to an international conference on race.\(^4\) When he died in 1947,\(^5\) he was lauded by the likes of Eleanor Roosevelt.\(^6\) Among the many honorary pallbearers at his funeral were national NAACP leaders W.E.B. Du Bois and Walter White; the well-known New York lawyer Lloyd K. Garrison of the law firm Paul, Weiss, Wharton & Garrison; three presidents of leading black colleges; and the members of the local judiciary, whose president judge hailed him as "one of the most able practitioners" in the courts.\(^7\) This seemingly unlikely path illustrates the role of law in shaping racial identity in the early twentieth century. We tend to think of law as an instrument for organizing the relationship between predefined racial categories. Law today is usually viewed as a means of securing racial equality or imposing racial inequality. Carter, however, lived in Harrisburg at a time when people did not attach meaning to racial identification in the ways that are so familiar to us today. Instead, law was a means of defining exactly what race meant at that place and time, and lawyers like Carter were at the center of this effort.

From birth, Carter was intimately familiar with the constitutive power of law in making race. Born to former slaves in Richmond, Virginia in 1866,\(^8\) just one year after emancipation, he


\(^6\) Associated Press, *supra* note 3, at C16; see Harris, *supra* note 3, at A5; Sheffield, *supra* note 2, at B5.

\(^7\) Justin Carter Lauded by Bar, in Jeanette Carter papers (on file with the Moorland-Spingarn Research Center, Howard University) (on file with author).

entered the world during an era when law was slowly untangling
the connection between race and citizenship. According to the
most famous state judicial decision involving slavery, *State v. Mann*,
his parents had no legal personality that could be
recognized by the common law because they had been born as
slaves. Even if they had been born free, according to Chief
Justice Roger Taney, they still would not have been citizens by the
simple fact of their race. In *Dred Scott v. Sandford*, Taney
infamously held that African Americans, slave or free, could not be
citizens of the United States and that "they had no rights which the
white man was bound to respect." In reality, African Americans
did participate in the legal systems of both the North and South
before the Civil War. However, the legal system had already put
its imprimatur on an idea, a powerful idea, that United States
citizenship was racially coded. American identity was white
identity. Less than two months before Carter was born, Congress
enacted the Civil Rights Act of 1866, which, supplemented by

---

9 *State v. Mann*, 13 N.C. (2 Dev.) 263 (1829).
10 *Id.* at 266.
12 *Id.* at 407.
13 See *Laura F. Edwards, Gendered Strife and Confusion: The
Political Culture of Reconstruction* 6-8, 70-71 (1997); *John Hope
Franklin, The Free Negro in North Carolina, 1790-1860*, at 82-86, 151-52
(1995); *Leon F. Litwack, North of Slavery: The Negro in the Free
States, 1790-1860*, at 93-96 (Phoenix Books 1965) (1961); Laura F. Edwards,
*Status Without Rights: African Americans and the Tangled History of Law and
Governance in the Nineteenth-Century U.S. South*, 112 AM. HIST. REV. 365,
365-66 (2007). For a provocative view of the subject that focuses on the ability
of slaves to maintain claims of property ownership, see generally Dylan
Penningroth, *Slavery, Freedom, and Social Claims to Property Among African
Americans in Liberty County, Georgia, 1850-1880*, 84 J. AM. HIST. 405 (1997).
14 On the racial coding of American identity, see generally FOREIGN IN A
DOMESTIC SENSE: PUERTO RICO, AMERICAN EXPANSION, AND THE
CONSTITUTION (Christina Duffy Burnett & Burke Marshall eds., 2001);
MATTHEW FRYE JACOBSON, WHITENESS OF A DIFFERENT COLOR: EUROPEAN
IMMIGRANTS AND THE ALCHEMY OF RACE (1998); IAN F. HANEY LÓPEZ, WHITE
BY LAW: THE LEGAL CONSTRUCTION OF RACE (rev. ed. 2006); MAE M. NGAI,
IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN
AMERICA (2004); ROGERS M. SMITH, CIVIC IDEALS: CONFLICTING VISIONS OF
15 Act of Apr. 9, 1866, ch. 31, 14 Stat. 27 (1866).
the Fourteenth Amendment, finally overrode *Dred Scott* and determined that African Americans could be American citizens. Thus, Carter was born into a world in which it was only becoming clear through law that he was a citizen and that he could do the things that ordinary citizens expect to do.

Indeed, Carter's entire boyhood was the scene of intense legal struggles in Virginia over the racial contours of citizenship that produced enactments and counter-enactments, moves and countermoves in the struggle to define what race meant in the post-Emancipation Era. At the time of his birth, African Americans did not possess the right to vote in Virginia. Even Carter's ability to go to college at Virginia Normal and Collegiate Institute had been authorized by an act of the state legislature only one year before he matriculated there, when the legislature founded the college as a noble experiment of trying to train former slaves to be teachers.

Given this background, it is easy to understand why W. Justin Carter decided to enter the Howard University School of Law in 1890. In addition to providing a profession that would allow him to get ahead in the world, law helped to define who Carter was, politically and racially. Howard Law School was dedicated to making officers of law out of people who only a short time before had been non-citizens. Among its first graduates were African Americans who in only two years' time transformed themselves from illiterate former slaves to graduates educated in the duties of citizenship and lawyering. Carter was more prepared than most of these early students, having previously earned a teaching degree

---

16 *See* Act of Apr. 9, 1866, ch. 31, 14 Stat. 27 (1866).
17 *See* JANE DAILEY, BEFORE JIM CROW: THE POLITICS OF RACE IN POSTEMANCIPATION VIRGINIA 68-69 (2000).
18 *Id.* at 16-21.
19 *See id.* at 68-69; *see also* NELSON MOREHOUSE BLAKE, WILLIAM MAHONE OF VIRGINIA: SOLDIER AND POLITICAL INSURGENT 134 n.149 (1935); STYLES, *supra* note 1, at 153; *William Justin Carter, supra* note 1, at 396.
20 *See* STYLES, *supra* note 1, at 153; *William Justin Carter, supra* note 1, at 396.
21 MAXWELL BLOOMFIELD, AMERICAN LAWYERS IN A CHANGING SOCIETY, 1776-1876, at 328-32 (1976).
22 *Id.*
from the Virginia Normal and Collegiate Institute. In fact, after graduating from law school, Carter served for two years as the assistant principal of a black public school in Annapolis, Maryland. Then in 1894 Carter's path took its mostly unlikely turn. Instead of continuing to teach or starting a legal practice in Virginia where he undoubtedly had friends and potential clients, Carter moved to Harrisburg, with its relatively small population and its miniscule black population. Like his decision to attend law school, this relocation took place just as Virginia's racial landscape was being redefined with the aid of law. For a racially ambiguous black lawyer like Carter, that terrain may have been much more hospitable in Harrisburg than in his home state.

In Virginia, the long struggle over the relationship between law and citizenship was being resolved around 1900 in ways that are now familiar to us. New laws mandated racial segregation in public places and the disfranchisement of black voters, as well as many white ones. This process is commonly viewed as a simple validation of racial prejudice. White people in Virginia and elsewhere in the South, confident of their racial superiority, simply wrote their preferences into law and had them validated by the courts. However, what segregation actually accomplished in Virginia, as Carter embarked on his legal career, was to help define racial identity in a context where it had become fluid. In Virginia,

---

23 See Styles, supra note 1, at 153; William Justin Carter, supra note 1, at 396.

24 Styles, supra note 1, at 153; William Justin Carter, supra note 1, at 396; Harris, supra note 3, at A5.


26 Dailey, supra note 17, at 14.

27 For the conventional view, see Michael J. Klareman, From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality 48 (2004).
many African Americans had risen in economic status after emancipation, and it was not uncommon to see blacks interacting in public space with whites as market vendors, postal employees, police officers, and even lawyers.\textsuperscript{28} Political parties remained integrated for years after the Civil War. The Readjuster Party, for example, was founded by a white, former Confederate general who also funded the incorporation of Carter's college.\textsuperscript{29} It drew in both black and white members and advocated for voting and civil rights throughout the late nineteenth century.\textsuperscript{30} The Readjusters' success was only possible because law had not yet cemented racial identity in Virginia.

Then came a spate of segregation laws and a constitutional amendment, which in 1902 disfranchised most of Virginia's black citizens.\textsuperscript{31} White Virginians used law to create mandatory segregation as an attempt to discipline public spaces where blacks and whites interacted. Public parks, restaurants, trains, bathrooms, and, of course, voting booths all became racially coded.\textsuperscript{32} Thus, Jim Crow laws and their validation by the courts did not simply affirm preexisting white prejudice, but rather taught whites that public spaces belonged to them.\textsuperscript{33} Through law, white identity was redefined as being separate from black. African Americans


\textsuperscript{29} Hylton, supra note 28, at 131; see DAILEY, supra note 17, at 15-76.

\textsuperscript{30} DAILEY, supra note 17, at 79; see BLAKE, supra note 19, at 176.

\textsuperscript{31} DAILEY, supra note 17, at 14.


challenged these enactments in court, but even formal legal doctrines had begun to define public space as white. During this period, judges interpreted the Fourteenth Amendment as implicating only public rights—political rights and civil rights—and relegated most black rights claims to the realm of social rights not cognizable by law.\textsuperscript{34} Most infamously, \textit{Plessy v. Ferguson}\textsuperscript{35} upheld the separate-but-equal doctrine in railroad transit by interpreting Homer Plessy's claim as involving social rather than political rights.\textsuperscript{36} Justice John Marshall Harlan vigorously dissented, arguing that the purpose of the Fourteenth Amendment was to bring African Americans into public life.\textsuperscript{37} A majority of Harlan's colleagues disagreed, and the \textit{Plessy} decision helped to redefine the racial identities of both blacks and whites by reinterpreting the nature of the public spaces where they could come into contact.

In segregated Virginia, black lawyers like Carter were in a precarious position because they could do something other African Americans could not. They could go into the most public of all spaces, the courtroom, and interact with whites as equals.\textsuperscript{38} There was no formal racial bar to practicing in court.\textsuperscript{39} Lawyers occupied a unitary profession. Like their white counterparts, black lawyers subpoenaed and cross-examined white witnesses.\textsuperscript{40} They could interact as equals with white judges and lawyers. Law had created a segregated world, and yet the legal profession preserved one of the few public spaces where blacks and whites could coexist. Black lawyers were racially ambiguous and thus very controversial.


\textsuperscript{35} Plessy v. Ferguson, 163 U.S. 537 (1896).

\textsuperscript{36} \textit{Id.} at 548-49.

\textsuperscript{37} \textit{Id.} at 552-64 (Harlan, J., dissenting).


\textsuperscript{39} \textit{Id.} at 180; see Hylton, \textit{supra} note 28, at 119.

\textsuperscript{40} See Finkelman, \textit{supra} note 38, at 180-81.
in Virginia. Because of this, some rural white counties forbade them from practicing at all by custom.\(^41\) Yet in other places they were respected by their white colleagues, and a few of them even drew in a significant white clientele.\(^42\) As a result, almost all of the black lawyers remaining in Virginia at the time Carter finished law school practiced in the eastern part of the state where African Americans were still a majority.\(^43\) By the turn of the century, a long-term trend had been set in motion that would cause black lawyers to disappear in large areas of the South over the next several decades, particularly in those places where whites were most intent on excluding blacks from public space.\(^44\) Given this new world of race, Carter might have hesitated to begin a career in his native Virginia.

It is not so clear, however, that northern cities like Harrisburg held any more promise than the South for black lawyers. The Great Migration of African Americans out of the South had not yet started in 1894 when Carter came to Harrisburg.\(^45\) The relatively few African Americans who inhabited northern cities tended to employ white lawyers.\(^46\) For instance, W.E.B. Du Bois reported that even in Philadelphia, with its relatively large black population, around 1900 only one or two black lawyers could make a living.\(^47\) Moreover, the vise of segregation was spreading in the North as well as the South. Blacks in the North competed with recent white

\(^{41}\) Hylton, *supra* note 28, at 150.
\(^{42}\) *Id.* at 152.
\(^{43}\) *Id.* at 149.
\(^{46}\) William Justin Carter, *supra* note 1, at 396.
immigrants for jobs and political power. New white immigrants often demanded and received greater segregation in schools and other public places. In Steelton, Pennsylvania, for instance, one study found that in the late nineteenth century, seven out of every ten black residents lived on one street, Adams Street. Of the 145 people living on that street at the time, 138 were black. White immigrants also squeezed blacks out of even low paying jobs at the local Pennsylvania Steel Company, and black economic progress stalled. Thus, at first glance, Pennsylvania would not have appeared to be much of an improvement over Virginia for W. Justin Carter.

In searching for the reasons that Carter came to Harrisburg, we must then ask what was distinct about that city and what attractions it held for someone like himself. In 1894, Harrisburg was at the end of an industrial revolution that had transformed it from a frontier outpost founded by John Harris to a small city with factories, unions, and a growing population. People from families named Cameron, Verbeke, and Calder took charge of the city and stamped their names on streets and public places, which still mark their long-gone presence there. As Penn State University historian Gerald Eggert has shown, the Industrial Revolution in Harrisburg had concluded by 1880, unlike comparable cities such as Reading, Pennsylvania; Trenton, New Jersey; and Albany, New York. New immigrants to the region disproportionately settled in Steelton, allowing the white population to stabilize and integrate. As a result, race relations in Harrisburg were more stable than in comparable cities that continued to industrialize, and there was less
demand for segregation. Race in Harrisburg was thus defined by a fluid set of ideas and practices, tied intimately to the city’s industrializing process.

There were also precedents for well-educated African Americans coming to the city and thriving. In 1872, for instance, William Howard Day came from New York to Harrisburg with two degrees from Oberlin College. He was elected to the Harrisburg School Board and served there for fifteen years. In an unprecedented development, he was President of the School Board from 1891 to 1893, even though the city was never more than ten percent black. In this city there was room for someone to come from New York and gain the respect of blacks and whites alike. In fact, in 1892, two years before Carter arrived in Harrisburg, Thomas Morris Chester, the first black lawyer to practice in the city, died. Chester had been born in Harrisburg in 1834 and became one of the leading black lawyers in the country in the nineteenth century. He studied at the Inns of Court in England and traveled as far as Moscow, where he met the Czar. Chester spent most of his career in Louisiana but returned to Harrisburg several times to practice law. His death, shortly after returning again to his hometown, left a vacuum in the local legal community, and a plaque outside the city’s Whitaker Center now marks his former presence there.

That void was soon filled by W. Justin Carter when he moved into an all-white neighborhood in Harrisburg in 1894. Carter

57 Eggert, supra note 25, at 247.
58 Id. at 246.
59 Id.
60 Id.; see also SCOTT & SMITH, supra note 25, at 46.
61 Eggert, supra note 25, at 220; see BODNAR, supra note 25, at 15 & tbl.1.
62 THOMAS MORRIS CHESTER, BLACK CIVIL WAR CORRESPONDENT: HIS DISPATCHES FROM THE VIRGINIA FRONT 91 (R.J.M. Blackett ed., 1989); see Historical Committee, supra note 2, at 1.
63 CHESTER, supra note 62, at 4.
64 Id. at 56.
65 Id. at 50.
66 Id. at 87.
67 Id. at 91.
68 See Sheffield, supra note 2, at B5.
69 Harris, supra note 3, at A5.
reported that his early years in the city were a struggle.\textsuperscript{70} Black people had little business for him, and the few who had some took it to white lawyers instead.\textsuperscript{71} Carter persevered and soon had his first reported case in 1895.\textsuperscript{72} During the next five decades, he would take on matters ranging from business law, to trusts and estates, to bankruptcy, to divorce, and to criminal law.\textsuperscript{73} He even served as an assistant district attorney for a short period.\textsuperscript{74} Local historians Calobe Jackson, Jr., Francis Haas, Jr., and Donald Morgan have found that he had 105 reported cases in the Dauphin County courts.\textsuperscript{75} These were just a small fraction of the matters he handled during the course of his career. Thus, Harrisburg may have been an attractive place for Carter, but one still wonders how he became so successful and managed to attract white clients in the era when the city was segregated.

Carter's success had something to do with the role of the lawyer, particularly a good courtroom lawyer, as he certainly was, in turn-of-the-century America. As threatening and destructive as the appearance of a black lawyer in court was to public morality in the South, it could be almost as disorienting in the North. In a court, a black lawyer could seem almost white. During this period, racial and ethnic prerequisites for bar membership were explicitly

\textsuperscript{70} William Justin Carter, supra note 1, at 396.
\textsuperscript{71} Id.
\textsuperscript{74} STYLES, supra note 1, at 153; William Justin Carter, supra note 1, at 397; Associated Press, supra note 3, at C16; Harris, supra note 3, at A5; Sheffield, supra note 2, at B5; W.J. Carter Dies, supra note 3, at A8.
\textsuperscript{75} Historical Committee, supra note 2, at 1.
rejected. As a result, black lawyers were often able to perform in court just like white ones. In court, lawyers used stylized ways of addressing one another—"Your Honor" and "My Esteemed Colleague." They were supposed to follow the script regardless of race. As a result, in a courtroom white observers could see something they could never see elsewhere, even in a place like Harrisburg: a black person interacting as an equal with whites in public. This unusual dynamic was particularly true in high-profile criminal cases, which garnered more public attention. Carter excelled at using these high profile cases to build his reputation. For example, in one case, he achieved an acquittal for a young, white mother in a murder prosecution after the suspicious death of her child. In another case, which most people considered a victory, his client was convicted of only second-degree murder for the shooting of a white state policeman in Juniata County. In another murder case, Carter achieved an acquittal for an Italian-American man and was publicly presented with a bouquet of

76 Many early twentieth century legal reformers desired to limit the admission to practice of ethnic minority lawyers of immigrant stock, but focused on competence and character rather than any measures that exhibited prejudice on their face. See generally Jerold S. Auerbach, Unequal Justice: Lawyers and Social Change in Modern America 14-129 (1976) (providing background on the barriers faced by immigrant lawyers in early America). With regard to race, even most southern jurisdictions admitted their first black lawyers within a few years after the onset of Reconstruction. See generally Smith, supra note 44, at 271-320 (showing state-by-state in southern jurisdictions how black lawyers were admitted to the bar). California repealed its statute limiting law practice to white males in 1878. Cal. Civ. Proc. Code § 275 (Deering 1878). Maryland courts continued to uphold that state's similar law until 1885, when they reversed course and admitted the state's first black lawyer. In re Taylor, 48 Md. 28, 28-29, 33-34 (1877); A. Briscoe Koger, The Negro Lawyer in Maryland 7 (1948); David S. Bogen, The Transformation of the Fourteenth Amendment: Reflections from the Admission of Maryland's First Black Lawyers, 44 Md. L. Rev. 939, 1039-41 (1985). Three years later, the statutory racial prohibition was formally dropped. Bogen, supra at 1043. The only significant subsequent effort to restrict bar membership to whites happened in Florida, where a 1913 bill passed the lower house but was never signed into law. Hylton, supra note 28, at 113 nn.22-23 (citing R.W. Thompson, Short Flights, Freeman (Indianapolis, Ind.), June 26, 1915, at 2). 77 Mack, supra note 33.
78 Id.
79 Styles, supra note 1, at 153-54.
80 Id. at 154.
flowers for his efforts. These cases may have raised the hackles of some, but they also earned Carter more white clients and allowed him to enter a world where he could be treated like and earn the same results as a lawyer of any other race.

Paradoxically, Carter's inroads into the white world simultaneously made him a respected figure in the black one. He became a noted civil rights leader precisely because of the respect he engendered among whites. After only three years of practice, Carter won his first reported civil rights case, and within a decade, he became one of the earliest members of the Niagara Movement, a predecessor of the NAACP. In the NAACP's second year, he joined its Committee of One Hundred, the organization's national governing body. The following year, when African Americans gathered in Washington, D.C. to remember Justice Harlan, the "Great Dissenter," they chose W. Justin Carter to give the principal speech memorializing the late Justice. President Taft and several Justices sent their greetings. The same year, Carter attended the Universal Races Congress in London, having been selected as a delegate by Taft, where scientists and public figures from around the world met to discuss race and race relations. By 1925, Carter was such an influential figure in local Republican politics that he helped engineer the defeat of a racist candidate for Congress in the district that encompassed Harrisburg. He later became an equally

81 STYLES, supra note 1, at 154.
82 William Justin Carter, supra note 1, at 397; Associated Press, supra note 3, at C16; Harris, supra note 3, at A5; Sheffield, supra note 2, at B1, B5; W.J. Carter Dies, supra note 3, at A8; Historical Committee, supra note 2, at 1.
83 KELLOGG, supra note 3, at 48 & n.7.
85 Laud Justice Harlan, supra note 84, at 16.
86 William Justin Carter, supra note 1, at 397; Harris, supra note 3, at A5; Sheffield, supra note 2, at B5.
prominent Democrat, supporting the New Deal. Pennsylvania Governor George Earle even appointed him to a commission to rewrite the workers' compensation laws.

In short, Carter's life perfectly illustrates the paradoxical nature of black lawyers' identities in an era of segregation. Carter was a leader in his local black community, and he crossed over into that of whites. In that respect, he was not alone. In northern cities like Boston, Chicago, and Cleveland, the leading black lawyers of Carter's era supported themselves by relying on a white clientele, and they simultaneously became leading figures in the local civil rights communities. We tend to think of black civil rights lawyers as interest group advocates, translating the special desires of discrete and insular minorities into law. But the lives of people like W. Justin Carter illustrate that civil rights lawyering was anything but special pleading. Legal work was a mode of being that allowed one to cross racial boundaries in a world where, in so many aspects of American life, law helped cement and harden racial categories.

Yet we should not emphasize the unboundedness of Carter's life, and those of his peers, for they came to their professional maturity just as the legal contours of race began to narrow around them. Even in the North, in places like Harrisburg, public places began to be segregated in early twentieth century. Constricting boundaries within restaurants, theatres, trains, and schools began to define public space as white. In 1920, the Pennsylvania Ku Klux Klan had a quarter of a million members and an active chapter in the county encompassing Carter's adopted home.

---

89 William Justin Carter, supra note 1, at 398.
90 Associated Press, supra note 3, at C16; Harris, supra note 3, at A5; Sheffield, supra note 2, at B5.
93 Id. at 92.
which Carter had such success was being redefined around him with the aid of law. For instance, the now familiar common law rule that most businesses can exclude any customer for any reason had its source in a series of cases involving black patrons in northern and western states who wanted attend the theater but were excluded because of their race. In the late nineteenth century, civil rights laws in Pennsylvania and elsewhere outlawed racial exclusion in many businesses open to the public, but judges found loopholes and allowed many businesses to evade them. The separate-but-equal doctrine in railroad travel that the Supreme Court of the United States affirmed in *Plessy v. Ferguson* is often cited as having had its source in a Pennsylvania case involving a black woman who wanted to ride in a railroad car in suburban Philadelphia. Pennsylvania law also prohibited school segregation, but many school districts, including Harrisburg and Steelton, continued to explicitly segregate their students by race until the time of *Brown v. Board of Education*. Racial fluidity in northern cities like Harrisburg was circumscribed.

The incident that W. Justin Carter is most remembered for in Harrisburg perfectly symbolizes the narrowing of the world around him. That was the decision by the Dauphin County Bar Association to reject Carter's application for membership in 1904. We should make no mistake: bar associations were not intended to include all lawyers. They sprang up around the country in the late nineteenth century as organizations of elite lawyers

99 *DOUGLAS*, supra note 92, at 87.
attempting to distance themselves from working class immigrants who were becoming members of the bar.\textsuperscript{102} Carter, however, was one of the elite. Moreover, he was the first lawyer ever to be rejected by the association without cause.\textsuperscript{103} Carter presented a problem. In every respect other than the color of his skin, he was one of them. He drew from the same client base as they, and he was equally successful in court. In so many parts of Carter's professional life, his role as a lawyer enabled him to cross racial barriers. His rejection by the Bar Association was a sign of the changing times, a sign that the cultural fluidity that had enabled some lawyers like him to prosper in parts of the North was evaporating, and a sign that with the imprimatur of law, bounds were being drawn more tightly across racial identity. Indeed, it was surely a sign of the changing times that there were few successors to fill his role. His son, W. Justin Carter, Jr., trained with him and continued to work after his death, but he continued in that effort alone until his own death in 1955.\textsuperscript{104} There were no other black lawyers in Harrisburg.\textsuperscript{105} Although African Americans increasingly populated the city, upon Carter, Jr.'s death, it was home to no black lawyers until James Rowland, Sr. decided to take up the reins in the early 1960s.\textsuperscript{106} By that time, the memory of black lawyers like Carter and the particular circumstances that enabled them to thrive had all but faded away as racial identity began to take on the contours that we know today.

What did Carter think of this shrinking world around him, of the circumscription of his racial identity? He left very few clues, for like most lawyers, not many of his papers survive. One clue might be his first and only reported civil rights case, \textit{Russ's}
Application, which was decided in 1898. In this case, Carter successfully argued for the denial of a license to a hotel-restaurant that refused to admit black patrons in violation of the state's civil rights law. The court offered a striking condemnation of discrimination, announcing, "It is time that race discrimination ceased in this state." This type of case was the centerpiece of the battleground of race relations as Jim Crow extended to the North. It was in public spaces where blacks and whites came into contact and race was defined. Perhaps it is an accident that this case was preserved for us, but it also may be the place where Carter chose to make his strongest stand. In Russ's Application, Carter protested against the exact type of activity that seemed to limit the worlds of people like him.

Another clue to what he thought about the shrinking racial contours of his world might be gleaned from the fact that he attended the Universal Races Congress in London in 1911. The Congress attendees were self-described racial radicals. W.E.B. Du Bois described the meetings as a gathering of people dedicated to the idea that "[t]he conception of races as of so many watertight compartments into which human beings can be crammed as if they were so many breeds of horses or cattle, has had its day. The word race will doubtless long survive, even tho [sic] it may have lost all meaning." Another paper presented at the conference said, "It is not legitimate to argue from differences in physical characteristics to differences in mental characteristics. . . . The status of a race at any particular time offers no index as to its innate or inherited capacities." This conference was a gathering of people from around the world to declare that all fixed ideas of what race means—of its inherent connection to social phenomena of any

---

108 Id.
109 Id.
110 See id.
111 See William Justin Carter, supra note 1, at 397; Harris, supra note 3, at A5; Sheffield, supra note 2, at B5.
112 See, e.g., SOCIOLOGY IN AMERICA, A HISTORY 547 (Craig Calhoun ed., 2007).
114 Id.
kind—must be thrust aside. Attendance at the conference was an eloquent protest against the world in which Carter, and people like him in the United States and around the world, found themselves, a world that tried to use law to fix the meaning of racial identity. Carter chose to attach himself to a group of people who would have none of it.

Most of the evidence we have about Carter's impressions of his world and how it was changing is indirect. The strongest surviving piece of evidence is an address that he delivered to the Eureka Literary Society of Penbrook, Pennsylvania on December 16, 1904,115 about six months after his rejection by the Dauphin County Bar Association;116 that is, half a year after one of the most stinging of the many racial slights he received in a lifetime. Carter delivered the address, entitled "The Duty and Responsibility of the Anglo-Saxon Idea of Citizenship,"117 to a white audience as an outsider to their racial group.118 He began, "I am going to speak to you to-night of what your race has contributed and is contributing to . . . the human race . . . ."119 He spoke to these white listeners120 about their past and the characteristics of the American white population.121 It was a conventional idea of the time, encapsulated in the title of the address, that citizenship created by white Americans was a consistent and liberal idea of freedom that could be traced back for a thousand years through the American Revolution to England and the Magna Carta.122 This story of how,

115 Historical Committee, supra note 2, at 2.
116 Associated Press, supra note 3, at C16; Sheffield, supra note 2, at B1; Historical Committee, supra note 2, at 2.
118 Historical Committee, supra note 2, at 2.
119 Carter, supra note 117, at 265.
120 Historical Committee, supra note 2, at 2.
121 Carter, supra note 117, at 265-72.
for a thousand years, Anglo-Saxons preserved liberty and freedom may have been very comforting to his listeners.

Then near the end the speech, Carter shifted his tone. He declared that in fact "[n]o race has been so domineering, none stronger and with a more exclusive spirit of caste . . . none more violent in prejudice once formed" than the descendants of Anglo-Saxons. He was not only describing prejudice against African Americans, but also against other "races," as they were called in his time. Immigrant groups were arriving in America at the time and often found themselves excluded from aspects of the Anglo-Saxon liberty Carter had praised. Carter's message was that embedded within this long-standing Anglo-Saxon idea of liberty was a need to establish racial hierarchies. Yet, also encapsulated within this prejudiced exterior was what he called "the pearl contained in this Anglo-Saxon mollusk[, which] has for me an irresistible charm." He saw a pearl of wisdom, the pearl of liberty, upon which radically subordinated groups could draw in order to be integrated into the American ideal.

Carter then shifted perspectives once again and asked his listeners to look at the world through his own eyes, the eyes of a son of slaves born a non-citizen, living in a world where his racial identity was being circumscribed. He told his listeners, "You will then behold the race of men as I have beheld them . . . . I sat with the lowly outcast and felt his outrage and his shame . . . . I lived in a squalid home and despised the pity which the disdainful cast upon my lot . . . ." He then transformed his own story into the story of all oppressed races all around the world:

---

123 Carter, supra note 117, at 271-72.
124 Id. at 274-76. On turn-of-the-century radical discourse, see, for example, ARIELA JULIE GROSS, WHAT BLOOD WON'T TELL: A HISTORY OF RACE ON TRIAL IN AMERICA (2008); THOMAS A. GUGLIELMO, WHITE ON ARRIVAL: ITALIANS, RACE, COLOR, AND POWER IN CHICAGO, 1890-1945 (2003); JACOBSON, supra note 14.
126 Carter, supra note 117, at 271.
127 Id. at 273.
128 Id. at 274.
129 Id.
I roamed with the savage Indians across the arid plains . . . .
I stood beside the enchanted Nile and wondered at the
mystery of the Sphinx . . . . I arose to greet the rising sun and,
with "Allah" on my tongue, bowed my head in solemn worship
towards Mecca's distant domes.
I wandered through Africa's torrid forest and scorching
plains . . . .
I walked beside the Ganges' sacred shores . . . .
I was slave, and by fortune scorned; I felt the whip cut into
my quivering flesh . . . .
I learned to dream and hate, and at Nemesis' bloody altar
immolated in thought and hope the whole detested tribe of
human oppressors and cried Content. 130

Despite the many subversions of the Anglo-Saxon idea of
liberty, Carter declared that he remained content. 131 He was
content because "[i]f the Republic is true to the great principles of
 liberty and justice which it proclaims; if you have learned the
lesson of your own history, . . . then will Anglo-Saxon genius and
achievement glow like a mighty flame to light the path of
struggling men." 132 Carter declared that despite itself, America had
within it the ability to achieve its own ideals. 133 The Anglo-Saxon
ideal of liberty, if not the Anglo-Saxon practice, was enough to
make him content, and he asked his listeners to aspire to that ideal.

The speech bears a family resemblance to some of the essays
published in W.E.B. Du Bois' The Souls of Black Folk, arguably
the most famous piece of African-American writing, published the
previous year. 134 Carter described the white world around him and
described African Americans as full citizens of that world. 135 He
asked his listeners to see the world through his eyes, a play on one
of the central ideas that Du Bois deployed in Souls. 136 Carter told
the story of Anglo-Saxon freedom through the eyes of a non-Anglo

130 Carter, supra note 117, at 275-76.
131 Id. at 276.
132 Id.
133 Id.
134 See generally W.E.B. DU BOIS, THE SOULS OF BLACK FOLK (Alfred A.
136 Id. at 274; DU BOIS, supra note 135, at 7-9.
Even though he was an outsider, he remained part of the core idea of American freedom. He declared that African-American identity was inseparable from American identity and held the key to the nation's core ideas. The speech had its genesis in who he was and what he practiced throughout his life. He moved back and forth between worlds that were supposed to be separate. He lived a life that a black person was not supposed to live in his particular time and place. The tragedy of his rejection by the Bar Association was in fact the denial of that larger idea. Despite that rejection, he believed that there remained a pearl, the idea of Anglo-Saxon liberty, at the core of American citizenship. Thus he could remain content even in a world of segregation. In this address, Carter told his listeners, and perhaps tells us as well, how he viewed the world around him as its racial contours narrowed.

The Harrisburg of Carter's hope and fears contrasts, in many ways, with our own. At the height of Carter's practice, Harrisburg was about nine percent black. It was a place that was not yet completely racially coded. Geography did not define race. But that was beginning to change. At the time Carter spoke, racially restrictive covenants were being perfected and inserted into deeds of houses around the country to prevent them from being sold to African Americans or other racial or religious minorities. At the time of Carter's speech, changes were being made to real covenant

137 See Carter, supra note 117, at 266-72.
138 Id. at 276.
139 Id.
doctrine, allowing people to create suburbs and communities that were homogeneous by class as well as race.\textsuperscript{142} By the time of Carter's death, the Federal Housing Administration, which subsidized much of the housing built after World War II, refused to support integrated housing.\textsuperscript{143} During that latter part of his life, racial identity was being redefined to coincide with geography. Carter's Harrisburg was a place rife with racial prejudice. Yet it was also a place where African-American and white communities lived and thrived, a place where blacks and whites could interact daily in public space, a place where a black man could be the president of a school board in a white-dominated city at the height of the Jim Crow era. The Harrisburg of today, however, is disproportionately black and poor.\textsuperscript{144} From the perspective of Carter's life as he lived it, it is tragic that geography defines race in Harrisburg today.

Yet, there remain those who carry on Carter's work today in his hometown and elsewhere, including black lawyers who succeeded him as boundary-crossers, helping to organize institutions like the Harrisburg Area Community College. Carter has many worthy successors, local and national. In fact, the most visible person who pushes forward with Carter's work in the present is the most famous black lawyer in America today. He is another former civil rights lawyer who, like Carter, made his career out of a public persona that crossed racial boundaries, a lawyer who used civil rights law practice not as a case of special pleading, but as a bridge to a career that confounds racial expectations. In the person of Barack Obama, W. Justin Carter has a very worthy successor.

\begin{itemize}
\item \textsuperscript{142} Sanborn v. McLean, 206 N.W. 496, 497-98 (Mich. 1925); Timothy Stoltzfus Jost, \textit{The Defeasible Fee and the Birth of the Modern Residential Subdivision}, 49 Mo. L. Rev. 695, 724-26 (1984); Power, supra note 142, at 794-97; Rose, supra note 142, at 172-74.
\item \textsuperscript{143} ROBERT O. SELF, \textsc{American Babylon: Race and the Struggle for Postwar Oakland} 97-98 (2003).
\end{itemize}