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Legal History and the Problem of the Long Civil Rights Movement

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CARLE, SUSAN D. 2013. *Defining the Struggle: National Organizing for Racial Justice, 1880–1915*. New York: Oxford University Press.

This essay offers a critical examination of use of the term "long civil rights movement" as a framework for understanding the legal history of the battle against racial inequality in twentieth-century America. Proponents of the long movement argue that expanding the chronological boundaries of the movement beyond the 1950s and 1960s allows scholars to better capture the diverse social mobilization efforts and ideas that fueled the black freedom struggle. While not questioning the long framework's usefulness for studying the social movement dynamics of racial justice activism, I suggest that the long framework is of more limited value for those who seek to understand the development of civil rights, as a legal claim, particularly in the first half of the twentieth century. The tendency of long movement scholars to treat civil rights as a pliable category into which they can put any and all racial justice claims is in tension with historical understandings of the term. Susan Carle's Defining the Struggle: National Organizing for Racial Justice, 1880–1915 *suggests an alternative approach. Her detailed and nuanced account of a period in American history when racial justice activists understood civil rights as a relatively narrow subset of legal remedies within a much broader struggle for racial equality indicates the need for an alternate history of civil rights—one that places the evolving, contested, and historically particularized concept of civil rights at the center of inquiry.*

"Civil Rights" is a term that did not evolve out of black culture, but, rather, out of American law. As such, it is a term of limitation.

—Alice Walker (1983)

INTRODUCTION

A recent trend among historians has been to reject the idea that the civil rights movement began in the 1950s and concluded by the late 1960s. Today most historians identify racial justice activism in the decades preceding and following

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what has been termed the "classical," "heroic," or Montgomery-to-Selma phase of the movement as not prelude or postscript, but properly part of the civil rights movement. We now have a quite extensive and widely celebrated historiography on the "long civil rights movement" (Hall 2005) that picks up the story in the 1930s or 1940s (Korstad and Lichtenstein 1988; Korstad 2003; Biondi 2006), or even earlier (Gilmore 2008), and takes it through at least the 1970s (Self 2005; Countryman 2006). This scholarship has generated powerful insights, highlighting not only the long history of the black freedom struggle, but also the diverse ideologies and tactics with which it was fought. Proponents of the long framework have been particularly effective at demonstrating the ways in which past generations of racial justice advocates linked challenges to racial discrimination with critiques of economic injustice and engagement with international affairs.

Following in the footsteps of the social historians and social movement scholars who pioneered the long movement framework, legal historians have come to embrace its premises. Some of the most insightful and influential recent works in legal history draw upon and contribute to this ever-growing scholarly genre. Risa Goluboff (2007) has brought to light a "lost" civil rights tradition in the work of National Association for the Advancement of Colored People (NAACP) and Justice Department lawyers in the 1940s. Tomiko Brown-Nagin (2011) has identified an underappreciated "pragmatic" strand of civil rights activism in her legal history of Atlanta's black freedom struggle from the 1940s to the 1970s. Kenneth Mack (2005, 2006, 2012) has offered a revisionist account of civil rights lawyering in the decades before *Brown*. A central theme of these works is the need to adopt a broader definition of civil rights, one that reaches beyond *Brown v. Board of Education* and the landmark congressional breakthroughs of the 1960s.

Although I believe the insights of long movement scholarship have unquestionably benefited our understanding of the history of the struggle for racial equality in the pre-*Brown* decades, in this essay I add a cautionary note. This scholarly trend also has its costs, costs that should be of particular concern for scholars who are interested in the role of law in this history. The long civil rights movement framework usefully expands our understanding of the history of the social movement for racial equality, but it has done so only by loosening the meaning of civil rights to the point where it has lost both its historical grounding and much of its analytical utility for sociolegal scholars. Historians differentiate themselves from other disciplines by their careful attention to the ways in which historical actors understood the world around them, including the labels they used to describe their world (see, e.g., Rodgers 1987). The sine qua non of historical scholarship is to engage with the past on its own terms. Yet to describe all racial justice activism from the early twentieth century, or perhaps even earlier, through the 1970s as a *civil rights* movement is to use a label that was in common usage throughout this period in a way that would make little sense to the historical actors themselves. The costs of this terminological ahistoricism may be relatively minimal for social historians and social movement scholars who are primarily concerned with explaining how ordinary people came together to act upon their shared visions of a more just society. But for those who are interested in law and the relationship of formal legal institutions and legal reform to social movement activism, how past actors defined and contested legal categories matters.

It matters, first, because when scholars rely on ahistorical terminology to describe the past, they risk obscuring the ways in which labels themselves were objects of contestation and points of leverage for social, political, and legal activity. To illustrate this point, in this essay I outline an alternative approach to the history of civil rights, one focused on what I call the *constrained tradition* of civil rights. This history places the evolving, contested, but historically particularized legal concept of civil rights at the center of inquiry. From Reconstruction through the civil rights battles of the 1960s, much of the force of the term was in its usefulness differentiating civil rights from other legal claims or strategies targeting racial inequality. Considered in its historical context, the civil rights label has been a tool of exclusion as well as inclusion. This important history gets lost when historians insist that civil rights should be understood to include the very racial justice claims that historical actors understood the term to exclude.

It matters also because when we transform a legal term that meant something particular (and, by extension, did not include certain things) into a generic, amorphous term, more useful for expressing approval or disapproval than capturing the past, we have lessened our tools of historical and legal analysis. Lost is the distinctive role that law plays in translating social movement claims into changes in legal policies and practices. To describe a diffuse social justice campaign as a movement for *civil rights*—a legal claim—risks overstating the coherence and viability as a claim on formal legal institutions of much of this activism. This, in turn, diminishes our ability to recognize the distinctiveness of the 1950s and 1960s, when social movement activism and formal legal developments intersected in uniquely transformative ways. The long movement's agenda of encompassing more and more racial justice activity in the decades between the Civil War and *Brown* under the label of civil rights obscures and misleads as much as it illuminates.

Susan Carle's *Defining the Struggle: National Organizing for Racial Justice, 1880–1915* provides a useful entry point into an examination of the legal history of civil rights and its relationship to the historiography of the long civil rights movement. This study of what she describes as the "founding" period of the civil rights movement displays many of the insights that are gained from the long movement approach. At the same time, the wealth of historical material in *Defining the Struggle* demonstrates the ways in which racial justice activists of the late nineteenth and early twentieth centuries understood civil rights as a relatively narrow subset of legal remedies within their broader struggle. Carle describes a critically important period in the history of the constrained tradition of civil rights, as racial justice activists picked up the pieces of Reconstruction Era reforms and looked ahead to the new battles of the twentieth century. Contestation over what was civil rights—and what was not civil rights—was a central part of these efforts at organizing and strategizing. And, as I argue in this essay, it would remain so through the twentieth century.

DEFINING THE STRUGGLE AND THE LONG CIVIL RIGHTS MOVEMENT

Although I will suggest that *Defining the Struggle* provides historical material that can be read as challenging key assumptions of the long civil rights movement

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paradigm, it is important to recognize that in this book Carle also embraces and expands upon the general premise of long movement scholarship—that to understand the iconic protests and legal achievements of the 1950s and 1960s one must look to the work of early generations. The long movement framework allows her to connect the work of largely forgotten organizations and individuals, working in a time when victories were rare and often ephemeral, to the better known history of civil rights in post–World War II America. Extending claims of her earlier writings (Carle 2009, 2011), *Defining the Struggle* presents racial activism of the late nineteenth century as the "founding" period of the civil rights movement. The eclectic strategies of these activists, she argues, established "a well-developed template for civil rights organizing" (13) that was "transmitted from one generation to the next" (4), making possible the creation of the NAACP in 1909 and, eventually, the civil rights breakthroughs of the 1950s and 1960s. Carle also emphasizes a central theme of long movement scholarship: the ideological and tactical eclecticism of racial activism during this founding period, particularly a focus on economic inequality alongside antidiscrimination work. *Defining the Struggle* thus demonstrates the long movement's potential for expanding our understanding of the history of the black freedom struggle, demonstrating the key roles played by previously overlooked individuals and groups and bringing to light the varied ways in which activists pursued the cause of racial equality.

But *Defining the Struggle* should also be read as challenging, at times explicitly, more often implicitly, certain aspects of long movement scholarship. Most obviously, there is Carle's friendly challenge to the chronological framing found in most of the scholarship. Pushing the starting date for the emergence of the civil rights movement back to the 1930s is not far enough, she contends. Its beginnings, she argues, should be traced back to the late nineteenth and early twentieth centuries when "insistent activist strategies were being pursued on the national level" (4). To the obvious counter-argument that the activism of this early period did not constitute a social *movement*, and certainly not a single continuous social movement that carried through to the middle of the twentieth century, Carle urges a change of perspective, a shift of focus from movement mobilization to "activist organizing efforts" (4).[1] Even if the activism of the turn-of-the-century era did not have the characteristics of a social movement, she explains, the organizational activity she charts

1. Although Carle suggests that her study of turn-of-the-century racial justice organizations refutes the "political opportunity thesis" advanced by social movement scholars (2–3, 138, 294, 305 n.4), which emphasizes the need for a measure of support from government and elite actors in order for a movement to take shape (see, e.g., McAdam 1982), her critique is better read as a claim regarding resistance and organizational activity (or "agency," the term Carle frequently deploys [e.g., xiv; see also Carle 2005, 2014]) rather than movement mobilization—and thus more a shift of focus than a refutation. The political opportunity thesis attempts to describe the conditions necessary for the emergence of a social movement, which Doug McAdam (1982, 51) describes as involving "a transformation of consciousness within a significant segment of the aggrieved population . . . [wherein] people must collectively define their situations as unjust and subject to change through group action." This is not Carle's topic, however. She is writing about elite actors who are creating organizations—what she describes as "social change activists convinced of the righteousness of their cause" (305 n.4). Although mass mobilization might be one of the goals of these activists, and although there indeed were pockets of movement mobilization during this period (e.g., Masur 2010), movement mobilization is not the focus of Carle's study.

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should be recognized as the "foundational period" of the civil rights movement (4, 297).

Alongside this supportive critique on the dating of the long movement, *Defining the Struggle* also suggests a more subtle and implicit critique of the long movement approach. Carle recognizes the problematic usage of "civil rights" in its modern meaning to describe the activities of her time period. In describing her general topic, she generally avoids the anachronistic usage of "civil rights," favoring instead "racial justice." She subtitles her book "National Organizing for Racial Justice, 1880–1915." (Compare this to the subtitle of Shawn Leigh Alexander's [2012] book, which covers much the same history as Carle's book: *Army of Lions: The Civil Rights Struggle Before the NAACP*. Unlike Carle, Alexander labels the black activist organizations of the period "civil rights organizations.") She defines the book's central task as "examin[ing] the role of early advocates and the organizations they led in shaping the direction of twentieth-century activists' work to bring law-related strategies to bear on the problem of racial justice" (4). Describing the broader struggle as one for "racial justice" rather than civil rights gives Carle language to better disaggregate the component parts of the struggle.

Carle's implicit critique of the long movement can also be found in the copious support she provides for what I have termed the *constrained civil rights tradition*. She presents evidence, that is, of historical actors contesting the very meaning of civil rights and finding opportunities to use it as a tool of differentiation between distinct, if related, approaches in the struggle for racial justice. Before turning to a closer examination of this alternative history of civil rights, I will describe what Carle has accomplished in this book.

The Forgotten Years of Racial Justice Organizing

Defining the Struggle is first and foremost a project of excavation and recovery. Carle's central goal is to reconstruct the history of a little known generation of racial justice activism and organization in the late nineteenth and early twentieth centuries. Through extensive research in archival sources and published works from the period, particularly in the black press, Carle seems to have run down every lead that sheds light on her subject. Simply by digging so deeply into these early figures and organizations, Carle makes an important contribution to legal history.

Carle describes her subject as "national nonpartisan organizations," dedicated to racial justice causes and "intended to have long-term status" (2) during the period from 1880 to 1915, with a focus on "law-related" work. Carle intends this careful definition to exclude political advocacy groups as well as more ephemeral organizational efforts during a period in which racial justice activists regularly formed organizations that were mostly local and short-lived.[2] She is interested in the organizations that influenced the goals and organizational structures of the more familiar racial justice organizations of the twentieth century.

2. Carle's definition also serves to differentiate her book from Alexander (2012), which covers many of the same organizations but without a particular focus on legal activism.

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Carle begins with short character sketches of five of the most significant leaders of the racial justice movement of the late nineteenth century, each of whom play central roles in the rest of the book: T. Thomas Fortune, journalist and founder of the Afro-American League; Reverdy C. Ransom, minister and leading figure in the Afro-American Council; Mary Church Terrell, the first president of the National Association of Colored Women and a founder of the NAACP; Mary White Ovington, a white social reformer who helped found the NAACP; and William Lewis Bulkley, an educator who played key roles in founding both the NAACP and the National Urban League. Although familiar figures such as W. E. B. Du Bois and Booker T. Washington feature throughout the book, at times quite prominently, Carle seeks to foreground less well known figures of this generation. Throughout the book, Carle deploys a focus on individual biography, filling her pages with brief, evocative character sketches of this founding generation of African American activists.

The core of *Defining the Struggle* examines the major national racial justice organizations of the late-nineteenth and early twentieth centuries. She begins with the Afro-American League (AAL), which she identifies as "the earliest substantial national organization-building effort aimed at establishing a nonpartisan institution with permanent status to oversee national racial justice activism" (8). Led by T. Thomas Fortune, it held its first national convention in 1891. Fortune turned to legislative action as the best hope for racial reform after the Supreme Court's 1883 ruling in the *Civil Rights Cases*, which cut back on federal authority to protect the rights of blacks in the South. He saw cross-racial working-class alliances as the path by which African Americans would activate the machinery of government to work on behalf of promoting racial and economic justice.

Although the AAL lasted only a few years, victim to internal divisions, funding difficulties, and Fortune's shortcomings as an organizer and a leader, Carle sees it as the foundation stone for all subsequent racial justice organizations. By envisioning and then creating a national organization dedicated to legal reform and backed by a national membership and fund-raising apparatus, Fortune "invented the idea for the NAACP," she writes (32).

After the demise of the AAL, Fortune, joined by Alexander Walters, spearheaded the creation of a new organization, the Afro-American Council (AAC). Carle devotes three chapters to the AAC, which was founded in 1898, lasted for a decade, was more economically stable than the AAL, and was able to pursue a more ambitious reform agenda than its predecessor. Whereas the AAL was largely an organizational vehicle for pursuing Fortune's social democratic reformist vision, AAC leaders aimed their energies more squarely on the task of pushing back or at least slowing the rising tide of Jim Crow—black disenfranchisement, segregation in transportation and public accommodations, and racial violence.

Historians have underestimated the importance of the AAC, Carle explains, in large part because of the assumption that Booker T. Washington, the influential advocate of black economic development over political rights and desegregation, controlled the organization, making it a tool of accommodationism rather than reform. She presents two objections to historians who have dismissed the AAC as a Washington puppet. First, she emphasizes that Washington did not define the

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organization and that the AAC leadership included more radical figures. Second, she rejects simplistic portrayals of Washington as a conservative obstacle to racial progress. Carle draws on the work of revisionist scholars who have demonstrated that behind his public embrace of accommodationist rhetoric Washington quietly worked to support challenges to Jim Crow. Washington and the radical faction in the AAC, led by Reverdy C. Ransom, differed in their attitudes toward the capitalist system—Washington supported it, the radicals sought to replace it with a social-democratic alternative—but on questions of racial justice reform their differences were not as great as they often appeared. Carle does take Washington to task, however, for his ruthless repression of any challenges to his leadership, which marginalized valuable contributors to the cause and amplified tensions within the AAC.

Carle next turns to the National Association of Colored Women (NACW), which was founded in 1895. A confederation of hundreds of local African American women's clubs, the NACW operated primarily as a social welfare organization. The leaders of the NACW focused on providing social services to the black community and supporting the creation of private institutions that would advance African American interests. Although the NACW makes for a potentially awkward fit in a study of "law-related activism," Carle makes a case for its inclusion based on several factors. Its leaders operated in a "law-infused intellectual climate" (158)—by marriage and friendship many of the NACW leaders regularly associated with lawyers. The organization regularly issued resolutions and petitions denouncing legal aspects of Jim Crow and calling for legal reform. Moreover, Carle suggests that even if NACW activists did not think of their social welfare activities "in law-related terms," they nonetheless had a political agenda. In their private welfarist initiatives, such as supporting the construction of hospitals, orphanages, libraries, playgrounds, health care clinics, and vocational training facilities, these women "filled in where there were yawning public service gaps for African Americans" and thereby "pushed at the boundaries of what should be considered the responsibility of the state" (169).

Carle devotes two chapters to the Niagara Movement, a short-lived but influential organization formed in 1905 by an elite group of African Americans frustrated with Booker T. Washington's control over the AAC. This organization attracted the more radical leaders of the AAC, most notably W. E. B. Du Bois, whose forceful attacks on what he saw as Washington's acceptance of disfranchisement and segregation made him one of the most prominent African Americans of the day. The Niagara Movement, Carle writes, "turned the direction of national racial justice organizing and set it on the early twentieth-century course of militant political and civil rights protest" (174). It was select in its membership—Du Bois envisioned the organization as a way to mobilize the "talented tenth" of the race. And it was eclectic in its reform agenda, focusing not only on challenging discriminatory laws but also private initiatives aimed at addressing inequalities in the areas of economic opportunity, education, and health services. The Niagara Movement, writes Carle, embraced a "mix of civil rights militancy coupled with social welfare concerns, as well as socialist-leaning rhetoric coupled with a growing emphasis on law and due process rights" (197).

After several years of successful national meetings, the Niagara Movement fell victim to competition from other groups and the wandering interest of some of its

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key leaders. The experience "taught Du Bois important lessons that would serve him well in the future," Carle explains. Among them were the weaknesses of his "talented tenth" organizing model ("he had not counted on the facts of human nature that can lead even those of the highest social status to stoop to petty bickering"); the need for a full-time paid administrator for the organization (the Niagara Movement relied on volunteers); and the fact that Du Bois himself was "more an ideas man than a people person" (213).

Carle next turns to the National Urban League (NUL). Although the focus of the book is primarily on national-level organizing, here Carle briefly moves to the local level, providing snapshots into the ways in which activism in Atlanta and New York City contributed to the national reform activity. In both places, social welfare goals were critical for reformers, but the political situation in New York City allowed for a focus on challenging legal discrimination, a reform pathway that was far more limited in Atlanta during this period. The "blockage in the political and civil rights sphere" created by the suffocating oppression of the Jim Crow South at the turn of the century "did not … stop Atlanta's race activist leaders from exercising agency. Instead, it channeled that agency in directions supported by the city's economic separatism"—intraracial uplift and community self-help initiatives (229).

Carle sees the formation of the NUL as indicative of an increasing specialization among racial justice organizations, with a rough division taking shape between "civil rights organizations, such as the AAC and the Niagara Movement," and "organizations focused on social welfare issues" such as the NUL (242). The NUL relied on funding from wealthy white donors, a choice that reinforced its commitment to social welfare initiatives, which were understood to be less controversial, and thus less likely to scare off the financial supporters, than direct challenges to Jim Crow, a primary goal of other organizations.

Carle's final two chapters examine the founding and early years of the NAACP. She focuses in particular on the early legal work of the NAACP, which mostly involved defending African Americans who were victims of viciously biased treatment in the criminal justice system. These cases, Carle argues, "helped to focus the organization's still-developing race consciousness in legal directions" (274). The early NAACP also supported litigation challenging segregation laws in the upper South and border states (278) and organized, sometimes successfully, to block passage of new Jim Crow laws (280–83). Most notably, in 1915 an NAACP-backed challenge to the use of "grandfather clauses" as a tool of black disenfranchisement won in the Supreme Court (*Guinn v. United States*). Two years later, the NAACP won another major legal victory when the Supreme Court struck down residential segregation ordinances (*Buchanan v. Warley*).

These efforts to disaggregate antidiscrimination from economic justice work, Carle argues, were more strategic than ideological. The NAACP's self-professed dedication to battling legal discrimination was in part a product of the recognition that the National Urban League was better equipped to deal with "questions of philanthropy and social economy." Controversial legal battles might risk the white funding sources on which racial uplift programs relied, so this kind of organizational division of resources made considerable tactical sense. Carle also suggests that the

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legal landscape encouraged this kind of division of resources. Because the Supreme Court distinguished "'public,' legally regulable matters and 'private' nonregulable concerns," racial justice advocates were constrained in the strategic options, Carle explains (290). "The basic jurisprudential categories that defined which 'rights' law could reach" (291) thus led NAACP-affiliated activists to see legal regulation and litigation as a viable pathway to antidiscrimination but not social welfare goals.[3] With the NAACP committed to litigation and lobbying and the National Urban League to social welfare and economic uplift, "the early 1910s . . . saw a coupling of political and civil rights with litigation and legislative reform, on the one hand, and social welfare and economic issues with voluntarist institution building in the private sphere, on the other" (289–90).

The formation of the NAACP provides what Carle describes as her book's "denouement, at which many of the figures encountered over the course of the preceding chapters came together to contribute to the founding and setting the course for the early NAACP" (249). The "synthesis of decades of African American racial justice organizing" (250), the NAACP marked the completion of "the bridges from past to future that late nineteenth- and turn-of-the-twentieth-century national racial justice organizations and leaders provided" (249).

In addition to providing the invaluable contribution of reconstructing these largely forgotten elements of African American history, Carle pursues an argument that the significance of this period of racial reform activity has been overlooked. This argument has two components. One is a claim that scholars have wrongly underestimated the vibrancy of racial justice activism during this period. Since Carle recognizes her book as building upon and contributing to scholarship of historians of African American history who have focused on this time period (e.g., Masur 2010; Alexander 2012), her critique is aimed primarily at legal scholars who "have assumed that racial justice activism during the late-nineteenth and early twentieth-century had little significance" (3). To the contrary, "the lack of political

3. Carle's claim here that constitutional doctrine made legal regulation of private activities infeasible goes too far. The Supreme Court never held that *law* could not reach the kinds of societal discrimination racial justice advocates targeted. Carle's misstep here appears to stem from a skewed reading of some key nineteenth century precedents. She writes, "In the nineteenth century, civil or legal rights referred to a quite limited set of privileges considered fundamental to all citizens' relationship to the federal government" (35), citing the Supreme Court's decision in the *Slaughter-House Cases* as demonstrating this point. But this confuses the Court's narrow reading of the privileges or immunities clause of the Fourteenth Amendment with the more generic conception of "civil rights," which, according to common usage at the time (discussed below) included many rights, such as the right to contract and to buy and sell property, that had nothing to do with the relation of a citizen to the national government. She also overstates the legal limits on regulation of what were considered "social rights." This category of rights, Carle writes, "were in fact not rights reachable by law at all" (34). But this is not correct. As the court explained in the *Civil Rights Cases*, which struck down the 1875 Civil Rights Act's prohibition of racial discrimination in various privately owned public accommodations, the regulation of "social rights" was beyond the scope of federal power to enforce the equal protection clause, but the states remained free to regulate in this area. Indeed, the majority seemed to assume that federal intervention might be justified if the states failed to protect these "social rights." It could not be "the dominant view" of the times that "'social' matters neither could nor should be subject to government regulation through law" (36) at a time when states routinely regulated this sphere of life. Outside the South, states responded to the *Civil Rights Cases* by passing their own public accommodation laws. And the architects of Jim Crow policies certainly did not see the boundaries of the "social" realm as a barrier to legal regulation.

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opportunity did not extinguish activism," she insists; "instead, it led to creative experimentation" (4). The reform work of this period, in other words, was significant in its own right. It led to many more defeats than victories, but the defeats were often productive. The struggle itself was important.

The second component of Carle's argument for the significance of this founding generation of racial justice activism shifts focus from what they achieved in their own time to how their work affected subsequent generations of racial justice organizational activity. Specifically, she seeks to show how this generation established a reform agenda and approach to organizing that would be picked up by later, better known reform efforts, particularly the NAACP.[4] She is interested in "the role of early advocates and the organizations they led in shaping the direction of twentieth-century activists' work to bring law-related strategies to bear on the problem of racial injustice" (4). She charts the "transmission of ideas" (4), including ideological commitments and reform strategies, from one generation to the next. This is the central theme of the book: identifying "lines of transmission"—a kind of cumulative learning dynamic—between generations of reformers, culminating in the creation of the NAACP. The "creative experimentation" that characterized the organizational activity of the period "created organizations and resources on which the next generations would draw." It "generated lessons that activists transmitted to the early NAACP, giving that organization its successful start in the face of the adverse conditions it set out to oppose at the height of the nadir period" of American race relations (4).

Carle's exhaustive reconstruction of so many little known figures and organizations displays a passion for hunting down and piecing together the shards of the historical record—accounts in the black press, court decisions, archival sources. Also on display is her admiration for her protagonists and her desire to bring them more fully into the fold of American history. For anyone interested in the history of African American organizational activity in the late nineteenth and early twentieth centuries, this book will be an essential resource.

The Long Civil Rights Movement and the Problem of "Civil Rights"

The historical material that Carle presents in *Defining the Struggle* displays the value of a historically contextualized and delimited definition of civil rights. This historicized approach allows for a more fine-grained examination of the evolving categories of racial justice claims as they develop inside and outside formal legal institutions. It also illuminates what I believe to be the analytical shortcomings of the open-ended conception of civil rights on which long movement scholarship is premised.

The central contribution of long movement scholarship can be understood on two levels. One is the assertion that the battle against racial discrimination in the twentieth century was, in the words of historian Glenda Gilmore (2008, 2), "part of a much larger push for economic justice and a broad vision of human rights."

4. This same thesis animates Alexander (2012).

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People have always fought against racial inequality in its myriad forms, a fight that included economic justice as well as antidiscrimination concerns. One of the contributions of *Defining the Struggle* is the support it provides for an expanded conception of the battleground on which activists challenged racial inequality. Carle writes of "the myriad strategies racial justice advocates used as the twentieth century progressed—strategies that spanned both political and civil rights *and* economic and social welfare goals" (5).

But long movement scholars urge us to go beyond simply recognizing the diverse ways generations of activists battled racial inequality. They also advance a more interesting and provocative claim: that much or all of the diverse and seemingly diffuse struggle for racial justice since the end of slavery is best conceptualized as a single, extended *civil rights movement*. It is with their use of this powerful label, traditionally understood to describe a relatively discrete set of events in the 1950s and 1960s, that long movement advocates have staked their challenge to existing historical interpretations.[5]

Long movement scholars assume that the racial justice reform efforts of the pre-*Brown* period are properly labeled as "civil rights" work, concluding from this point that the meaning of civil rights in this period differed in fundamental ways from the meaning that would come to dominate popular and scholarly discourse in the 1950s and thereafter. Glenda Gilmore, in *Defying Dixie: The Radical Roots of Civil Rights, 1919–1950* (2008), criticized "the simplified stories that the media told of the movement," in which "civil rights came to mean school integration, access to public accommodations, and voting rights." A long movement perspective brings to light "the complexity of a drive to eliminate the economic injustices wrought by the end of slavery, debt peonage, and a wage labor system based on degraded black labor" (9). According to Gilmore, the 1930s and 1940s was the "first civil rights movement" (9); it was the "high tide of civil rights" (412; see also Hall 2005).

Although the long movement framework has received widespread acceptance within the historical community, some historians have challenged its premise that the black freedom struggle in the twentieth century is best understood as a singular civil rights *movement*. They argue that the long movement framework problematically conflates various racial justice–oriented movements, in the process overlooking significant historic disjunctures and obscuring the distinctive qualities of the "short" civil rights movement of the 1950s and 1960s (Lawson 2003; Chappell 2004;

5. One may argue that here and throughout this essay I place too much weight on this label "civil rights." In my defense, it is worth noting that social historians (Chafe 1980; Kelley 1990; Dittmer 1994; Payne 1995; Thornton 2002) and social movement scholars (McAdams 1982; Morris 1984) have long challenged the Montgomery-to-Selma account as too chronologically limited to capture the experience of the black freedom struggle on the ground. These scholars generally accepted that the "civil rights movement" was a phenomenon of the 1950s and 1960s, but then adopted a broader terminology—such as the "black freedom struggle" (see, e.g., Carson 1986)—to capture the long history of grassroots protest experience. But the introduction of these civil rights labels—"civil rights unionism" (Korstad and Lichtenstein 1988; Korstad 2003) and "the long civil rights movement" (Hall 2005)—caught on and moved scholarly discussion in a way the earlier scholarship had not. Most importantly for the purposes of this essay, a recent generation of legal historians has built off this idea of a long civil rights movement and has begun urging a new appreciation of the broader meaning of "civil rights" in the pre-*Brown* period. So in this particular case of historiographical revisionism, I would argue that the label has done considerable work.

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Boyle 2005; Keita Cha-Jua and Lang 2007; Arnesen 2009, 2012)—distinctive qualities that historical actors themselves often emphasized (Chappell 2004, 568).

To these critiques of the idea that racial justice activism in the twentieth century is best described as a singular social *movement*, I add a critique of the other assumption embedded in long movement scholarship: that the diverse strands of racial justice activism before the 1950s is best described as an overarching campaign for *civil rights*.

CONTESTING CIVIL RIGHTS: AN ALTERNATIVE HISTORY

In this section I draw on Carle's book and various other works of scholarship, as well as some primary materials, to construct a history of civil rights that serves as a critique, or at least an alternative, to the history of civil rights contained in long movement scholarship. If the premise of the long civil rights movement has been a more expansive conception of civil rights, the premise of this alternative history is what I call the constrained tradition of civil rights. It emphasizes how past generations have contested the meaning of civil rights. This alternative history shows that the category of civil rights has often served as a tool for exclusion and differentiation. What we see are recurring arguments, or sometimes simply operating assumptions, that some claim or some tactic was *not* civil rights. Policing the boundaries of civil rights was often the work of opponents of racial justice. But this was not always the case. As the following account demonstrates, asserting limits on civil rights was also a weapon for racial justice advocates.

A Brief History of the Constrained Tradition of Civil Rights

In the decades following the Civil War, the "civil rights" label was a salient and powerful term in mainstream legal discourse. Its exact boundaries were intensely contested, but it was also understood to be a particular and determinate category of basic rights relating to participation in the public sphere. When Republicans in Congress passed several "civil rights" acts in the decade following the Civil War, they sought to protect the right to make contracts, buy and sell property, sue and testify in court, and access public accommodations. The impetus was protection of personal security and property. Both proponents and critics of this legislation understood civil rights to be distinct from "political rights," such as the right to vote, serve on juries, or hold office (Primus 2004; Brandwein 2011; White 2014). In the debate over the Civil Rights Act of 1875, a law that prohibited racial discrimination "inns, public conveyances on land or water, theatres and other places of amusement," defenders of the law insisted that access to these facilities involved civil rights, not social rights (Brandwein 2011, 81–84). ("Social rights" implicated an amorphous conception of social interactions that ran the gamut from private social clubs to privately operated public accommodations—taverns, theaters, and the like—to public schools.) In the *Civil Rights Cases* of 1883, in which the Supreme Court struck down the 1875 law, part of the reasoning of the majority opinion was that public accommodations did not involve civil rights, which

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Congress had power under the Fourteenth Amendment to protect, but social rights, which Congress did not. The same distinction reappeared in *Plessy v. Ferguson* (1896), when the Court held racial segregation in railroad cars was permissible under the Fourteenth Amendment because it involved social interactions and not civil rights. Justice John Marshall Harlan's dissents in both cases were premised on his different understanding of what was and was not a civil right. From the beginning, differentiating the category of civil rights from other categories of rights was at the heart of the civil rights project.

The Supreme Court failed, however, to narrowly circumscribe the definition of civil rights, at least in terms of public legal discourse. In fact, in the years following the *Civil Rights Cases*, it became commonplace to describe racial nondiscrimination in public accommodations as a civil rights issue. In response to the *Civil Rights Cases*, activists organized "civil rights" leagues (Alexander 2012, 30). Many state legislatures passed their own public accommodation laws, which they typically labeled "civil rights" laws (316 n.10; see also Konvitz and Leskes 1962, 157–58). One can even locate at least one reference to the campaign to pass state-level public accommodation laws as a "civil rights movement" (Colored Leagues 1884). By the closing decades of the nineteenth century, civil rights most commonly referenced protections against racial discrimination in public life as defined in the constitutional amendments and statutes (federal and state) of the Reconstruction Era (see, e.g., Bouvier 1892; Smith 1903).

Thus, when Carle picks up her story in the aftermath of Reconstruction, she describes a world in which civil rights referenced a subset of the broader agenda of racial justice activism. The activists she describes generally understood civil rights claims as challenges to racial segregation pursued through the formal legal mechanisms of lobbying and litigation. The Niagara Movement's "Civil Rights Department" worked to secure passage of public accommodation legislation in northern states, challenge the exclusion of black men from juries, and ensure that segregated travel accommodations were materially equal (207). At an early meeting of what would become the NAACP, when Oswald Garrison Villard called for creating a "political and civil rights bureau," he described its ambit as "bringing about enforcement of the Fourteenth and Fifteenth Amendments" and "obtaining court decisions upon the disenfranchising laws and other discriminatory legislation" (258). He argued for separate bureaus to focus on education and labor concerns (259). Although the early NAACP was dedicated to both legal and social welfare reform, its leaders understood them to be distinct projects, at least when it came to devising strategy and dividing labor within the organization. One theme that emerges from *Defining the Struggle* is the ways in which historical actors differentiated "civil rights" work—which they understood as formal legal activity aimed at officially sanctioned racially discriminatory policy—from other kinds of racial justice activity, such as racial uplift or social welfare reform efforts. Indeed, the book culminates in the creation of the NAACP, an organization whose founders explicitly defined civil rights as their primary agenda, while leaving "questions of philanthropy and social economy" to other organizations (275).

Defining the Struggle offers ample support for the particularized, constrained meaning of civil rights during Carle's period of inquiry. Fascinating and important

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organizational dynamics are made intelligible and articulable through Carle's attention to a historically grounded understanding of civil rights as something other than—and less than—the racial justice struggle. To be clear, most of the activists Carle examines were as concerned with addressing economic inequality as they were with addressing racial discrimination. They saw the two as necessary components in the struggle for racial equality. But they also understood the two issues to be distinguishable. What Carle's account reveals is that the racial reformers of this period were quite conscious of the severability, in conceptual, tactical, and organizational terms, of civil rights (which they defined narrowly) and social welfare issues.

In the early decades of the twentieth century, the usage of the civil rights label evolved once again. As the Reconstruction Era debates over the meaning of civil rights receded into history, and the federal and state civil rights laws that remained in the books fell into chronic under enforcement, some even forgotten, references to civil rights in the context of racial discrimination sharply declined. In the 1930s and 1940s African Americans outside the South brought some lawsuits under their state "civil rights" laws, which prohibited racial discrimination in public accommodations, and the press covered these as "civil rights cases" (Engstrom 2011, 1101–03). But the bulk of the work of racial justice activists and lawyers in this period came under labels other than civil rights. Those who fought for expanded legal protections against racial discrimination might describe their work as involving civil rights, but when they did so they generally used the term as a referent to the source of law that was the basis for the claim: in some cases the equal protection clause of the Fourteenth Amendment, but in most cases a state or federal "civil rights" law. Civil rights was not the activist cause or identity it had been, to a limited extent, during Reconstruction and that it would become in the 1950s and 1960s.

At the same time usage of the civil rights label in the context of legal challenges to Jim Crow took a turn to the more precise and infrequent, usage in nonracial contexts increased as rights discourse in general became more prominent. From the turn of the century through the 1940s, the term became a commonplace generic referent for a broad array of personal rights. This was a period of growing demands for individual rights of all sorts, and civil rights was a useful term to any number of rights claims. During this period, the mere incantation of the label "civil rights" conveyed remarkably little. It might reference a racial nondiscrimination claim under a state or federal law; or a right to free expression; or contractual and property; or labor-oriented rights, such as the right to organize and collectively bargain; or the right *not* to join a union (Goluboff 2007; Lovell 2012; Lee 2014; Weinrib 2015).

It was against this backdrop of semantic ambiguity that the modern concept of "civil rights" as a label specifically for the legal battle against Jim Crow and other forms of racial oppression was born in the late 1940s. Its origins can be traced to President Truman's creation in 1946 of a special commission, titled the President's Committee on Civil Rights (PCCR), whose primary mission was to investigate racial inequalities and propose legal reforms. Philleo Nash, a special assistant to Truman, later explained that the administration officials who planned the PCCR used "civil rights" in the title of the commission since it was "a term that was

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slightly fresh" and it "was not used for this function [i.e., racial justice] at that time" (Nash 1967). When the PCCR asked the lawyers in the Justice Department's Civil Rights Section for suggestions on what exactly a committee dedicated to civil rights might do, they could offer little guidance. Civil rights "is not a technical legal term," they explained, "but a phrase of popular currency applied somewhat indiscriminately to a miscellaneous group of rights, interests and situations" (Civil Rights Section 1996 [1947]). No one, it seemed, had much of an idea what "civil rights" meant (Lovell 2012). "Widely used though the term may be, considerable debate would be provoked were it necessary to determine the limits of the term with any degree of precision," noted one scholar (Sanders 1948, 148).

For those who urged increased government attention to the problem of racial discrimination, the civil rights label worked for several reasons. One of the outgrowths of the experience of World War II was a newfound appreciation of the value of individual rights claims, so a term such a "civil rights" carried with it a particular cache in public discourse. People argued about what civil rights meant, but hardly anyone rejected the idea of civil rights itself. Its ambiguity could be an attribute, since one could use the term to emphasize different issues at different times and in places. And the term retained some connection to the Reconstruction Era. Among the primary tools the Civil Rights Section had were the remnants of the civil rights laws of the 1860s and 1870s (Goluboff 2007). All these factors made the term ripe for the taking.

The release of the 1947 PCCR report, titled *To Secure These Rights*, and Truman's effort to translate its recommendations into federal policy, pressed a new definition of civil rights on the nation. Although the report never explicitly defined civil rights, its overwhelming focus on the rights of African Americans played a central role in steering public discussion toward its emerging, race-centered meaning, with a particular focus on antidiscrimination policy. Following the publication of the PCCR Report, political leaders and popular and scholarly commentators began with increasing frequency to use the term "civil rights" to represent the issue that had previously been described as the "Negro question" or the "race question."[6] The same year as the publication of *To Secure These Rights* saw books published with titles such as *The Constitution and Civil Rights* (Konvitz 1947) and *Federal Protection of Civil Rights* (Carr 1948). Truman gave a special "civil rights" address to Congress in 1948 in which he made a case for implementing the recommendations of the PCCR. He urged the strengthening of Reconstruction Era federal civil rights laws, a federal antilynching law, increased protection of voting rights, the creation of a Fair Employment Practices Commission, and ending discrimination in interstate transportation. He also called for the creation of "a permanent Commission on Civil Rights, a Joint Congressional Committee on Civil Rights, and a Civil Rights Division in the Department of Justice" (Truman 1948). Collectively, these proposals became known as Truman's "civil rights program." The reforms got nowhere in Congress. But the label stuck.

6. To cite one prominent example, *An American Dilemma*, Gunnar Myrdal's 1944 examination of race in the United States, was subtitled *The Negro Problem and Modern Democracy*. Its sporadic references to "civil rights" were mostly in reference to Reconstruction Era legislation.

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From this point onward, civil rights became synonymous with the legal campaign for racial equality. When the heads of the several racial justice organizations came together in 1952 to form a coalition designed to pressure Congress to take up Truman's call for national civil rights legislation, they named themselves the Leadership Conference on Civil Rights (Fishbein 1952). When President Truman spoke before a rally of African Americans in Harlem in 1952, he was introduced as "Mr. Civil Rights" (Truman Declares 1952). That same year the editors of *Life* magazine declared in no uncertain terms: "Civil rights means Negro rights" (White Supremacy 1952).

It was only in the wake of the PCCR report and Truman's highly publicized push for federal civil rights reform that people began to describe the struggle for racial justice as the civil rights *movement* (see, e.g., Urges Ballot 1948; Since Seneca Falls 1948). Until civil rights became specifically associated with a package of racial antidiscrimination reforms, such a label would not have made much sense. As a referent, it would have been either too narrow (like calling it the "public accommodations movement") or too diffuse (like calling it the "fundamental rights movement"). By the late 1940s, with the commonplace meaning of civil rights increasingly associated with equality rights for African Americans, the idea of a movement for civil rights began to make sense. Although the term "civil rights movement" did not become a regular part of popular discourse until the 1960s, its basic meaning solidified in the late 1940s.

It is important to note that the coalescing of the meaning of civil rights around the race issue in the late 1940s was largely a project of exclusion. Even as Truman and other Cold War liberals adopted this powerful label to bolster their demand for federal policy aimed at Jim Crow's most flagrant (and internationally embarrassing) manifestations, they also used the label to marginalize the interests of other minorities. The emergence of antidiscrimination policy as a major public policy issue happened alongside a new wave of suppression of political radicalism as the nation was overrun with an anticommunist fervor. Cold War liberals such as the influential historian Arthur M. Schlesinger Jr. (1949) justified their support for expanded rights for African Americans alongside new restrictions on rights for political radicals by urging the American people to distinguish "civil rights" from "civil liberties." One could be committed to racial antidiscrimination measures ("civil rights"), they argued, while also believing that national security required limitations on the speech and due process rights of suspected subversives (which they labeled "civil liberties") (Schmidt 2016).

The construction of "civil rights" as a discrete category relating to race relations in the late 1940s thus strengthened the forces pushing for racial equality while also narrowing the field of battle. It helped to raise the salience of the struggle for racial justice on the national agenda. What had been known as the "Negro problem" or the "race problem" or, more generally, "race relations" now had a label that gave the issue a more generalizable connotation. The new label reframed a "problem" into a potential solution. "Civil rights" referenced the legal tool that would address the problem. The new label invited action. Yet it was action of a particular kind, for as "civil rights" came into common understanding as shorthand for legal reforms targeting racial inequality, the Cold War liberals responsible for

this development also sought to exclude certain kinds of legal reforms from their newly configured category. As the label gained traction in popular discourse in the late 1940s and early 1950s, racial liberals pressed a particular version of legal reform, one that downplayed socioeconomic reforms and aimed primarily at racial discrimination by state actors (Goluboff 2007, 238–70). The remaking of the meaning of "civil rights" in the late 1940s was a part of an effort by white and black liberals to steer racial justice reform into narrower but more legally and politically viable channels.

Contesting Civil Rights in the Civil Rights Era and Beyond

From the period in the late 1940s and early 1950s when the civil rights label first became widely understood as referencing legal challenges to racial discrimination, racial egalitarians expressed concern about the limits and exclusions of civil rights. Carey McWilliams, a writer for *The Nation* and an activist committed to combating both anticommunism and racial discrimination, accused liberals in the early 1950s of using their newfound interest in civil rights to divert attention from the problem of economic rights and free speech. "Civil liberties and civil rights are not separable," he warned (1952, 653). In 1960, when African American students across the South launched the lunch counter sit-ins, they would often contrast their protest movement with the "civil rights" approach, which they associated with the work of the NAACP. "The legal redress, the civil-rights redress," explained James Lawson, a leader of the Nashville student movement, "are far too slow for the demands of our time. The sit-in is a break with the accepted tradition of change, of legislation and the courts" (Halberstam 1960, 18). African American journalist Louis Lomax praised the students for having "shifted the desegregation battle from the courtroom to the market place, and hav[ing] shifted the main issue to one of individual dignity, rather than civil rights" (1960, 42). These critics of "civil rights" were all operating under the defining assumption of the constrained tradition of civil rights. They accepted that there were boundaries to the category, but they then called on people to go beyond these boundaries—to go beyond civil rights.

One of the most influential articulations of the constrained tradition of civil rights can be found in Bayard Rustin's 1965 essay, "From Protest to Politics." Rustin differentiated a "classical" phase of the civil rights movement, which began with *Brown* in 1954 and concluded with the Civil Rights Act of 1964, from the social movement he saw taking shape in that movement's wake. By 1965, he wrote, the issue "is not *civil rights*, strictly speaking, but social and economic conditions" (26). "[T]he civil rights movement is evolving from a protest movement into a full-fledged *social movement*—an evolution calling its very name into question" (27). The focus has shifted from "removing barriers to full *opportunity*" to "achieving the fact of *equality*" (27). More than legal barriers were at issue; more than "the Negro's needs," the movement must address "human needs generally" (27). By the mid-to-late 1960s, many racial justice activists—including, most famously, Malcolm X and Martin Luther King, Jr.—as well as liberal legal scholars, frustrated with the perceived limitations of a "civil rights" agenda, defined their real goal as advancing

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human rights. They revitalized this venerable label in order to describe claims that extended beyond the antidiscrimination focus of civil rights to capture a range of agendas, from a national labor–civil rights alliance to an idealistic, even utopian, campaign for justice and equality on an international scale (Jackson 2007; Schmidt 2016).

In the decades since the 1960s, academics and commentators have echoed Rustin's basic concern with the limits of "civil rights" and the "civil rights movement." Historian Clayborne Carson (1986) urged a distinction between "civil rights reform" and the "black freedom struggle." He contended that the term civil rights connotes a top-down explanation of the civil rights movement, one that assumes "that the black struggle can best be understood as a protest movement, orchestrated by national leaders in order to achieve national civil rights legislation." A civil rights framework reduces the black struggle to a "national civil rights reform effort rather than a locally-based social movement" (Carson 1986, 23). But national civil rights leaders did not orchestrate or control local activism. "There was a constant tension between the national black leaders, who saw mass protest as an instrument for reform, and local leaders and organizers who were often more interested in building enduring local institutions. . . . Black communities mobilized . . . to create new social identities for participants and for all Afro-Americans" (27). Viewed this way, "there was much continuity between the period before 1965 and the period after" (27). Carson argued for a long view of the black freedom struggle, but he would differentiate this from the movement for civil rights reform.

Historian Charles Payne (1998, 128, 108) similarly warned of the "historical baggage" carried by the term civil rights, noting that "it is not at all clear that [the history of the civil rights movement] can be well understood in terms of 'civil rights.'" "'Civil rights' was always a narrow way to conceptualize the larger struggle," he writes. "For African Americans, the struggle has always been about forging a decent place for themselves within this society, which has been understood to involve the thorny issues of economic participation and self-assertion as well as civil rights" (129; see also MacLean 2006, 5–6). In his study of African American activism in rural Alabama, Hasan Kwame Jeffries (2010, 4) argues that what his protagonists fought for were not "civil rights" but "freedom rights," a label that "acknowledges the centrality of slavery and emancipation to conceptualizations of freedom" and "incorporates the long history of black protest dating back to the daybreak of freedom and extending beyond the Black Power era."

One of the most pointed critiques of the limits of civil rights comes from the novelist and essayist Alice Walker (1983, 336). "The term 'Civil Rights' could never adequately express black people's revolutionary goals, because it could never adequately describe our longings and our dreams, or those of the non-black people who stood among us." Of the "civil rights movement" label, she writes, "I have never liked the term itself. It makes one think of bureaucrats rather than of sweaty faces, eyes bright and big for Freedom! marching feet. No; one thinks instead of metal filing cabinets and boring paperwork." She traces this to the fact that "'civil rights' is a term that did not evolve out of black culture, but, rather, out of American law. As such, it is a term of limitation. . . . Even as it promises assurance of greater freedom it narrows the area in which people might expect to find them."

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This approach to civil rights, evident ever since the birth moment of modern civil rights in the early Cold War period, pressed by various civil rights figures, social historians, and commentators, describes the same kinds of radical, social democratic claims that historians have claimed should be encompassed in a long civil rights movement, but they were insisting that these kinds of claims were not properly understood as civil rights. The constrained tradition I have described is in tension with the premise of the long civil rights movement. In its critique of the limits of civil rights, it assumes that there is something definable and coherent that is civil rights and that it is relatively limited in scope. This is precisely the approach to civil rights that the long movement scholars attempt to refute.

THE LONG MOVEMENT PARADIGM ASSESSED

If the usage of "civil rights" as a catch-all for racial justice work is a relatively recent phenomenon—indeed, if there has long been a rich critical tradition against this very characterization—then the question arises: why have proponents of the long civil rights movement scholars chosen this usage over a more historically sensitive alternative? The answer is not hard to discern. The term "civil rights" has achieved a rarified place in American political discourse. Alongside terms such as "freedom," "equality," "liberty," it has become a label of uncontested rightness. The civil rights movement—the classical, Montgomery-to-Selma movement—has been elevated into a mythical space in American memory, celebrated by those on both ends of the political spectrum as a redemptive moment in American history (Hall 2005). Civil rights disputes today are not over whether civil rights should be protected, they are over what kinds of claims belong in this category of "civil rights." Breakthroughs on issues of gay rights, and gay marriage in particular, were reflected by, and fueled by, their elevation to a "civil rights" issue. Since the 1960s, the civil rights label has attained a magical quality. Generations of Americans have recognized the value of embracing this label—even as they have all sought to change its meaning. The creation of the long civil rights movement framework is the latest in a line of efforts that trace back to Reconstruction to redefine this potent label in a way that serves advances a particular political vision.

This present-day agenda is never far from the surface in long movement scholarship. When Jacquelyn Dowd Hall gave the long movement its name, she openly called on scholars to embrace what she argued was a better understanding of the history of civil rights. Her goal in urging for a reconceptualization of the civil rights movement was unapologetically presentist and politicized in its orientation: "The movement's meaning has been distorted and reified by a New Right bent on reversing its gains," she wrote (2005, 1235). An alternative to what she attacked as the "master narrative" of a "short civil rights movement"—"confin[ed] . . . to the South, to bowdlerized heroes, to a single halcyon decade, and to limited, noneconomic objectives"—"prevents one of the most remarkable mass movements in American history from speaking effectively to the challenges of our time" (1234). As a corrective, she offered "a more robust, more progressive, and *truer* story—the story of a 'long civil rights movement'" (1235). "I want to make civil rights harder," she

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wrote. "Harder to celebrate as a natural progression of American values. Harder to case as a satisfying morality tale. Most of all, harder to simplify, appropriate, and contain" (1235; see also Gilmore 2008). The birth of the long civil rights movement, wrote Nelson Lichtenstein (2010, 245), was a "boon to those liberals who sought to preserve for the progressive left, in the twenty-first century as well as in the twentieth, the ideas, ideologies, and social movements that they thought had long linked their cause to that of African American freedom."

Drawing attention to the origins of the modern understanding of civil rights does not undermine the important contribution of long movement scholarship. Most notably, that scholarship has shown that racial justice advocates in the generations before the 1950s embraced a notably broad conception of racial reform, particularly when contrasted with the antidiscrimination approach that dominated the headlines of the 1950s and 1960s. The question, though, is whether this should be described as a long *civil rights* movement. The question is whether the full panoply of racial justice activism in the pre-*Brown* period is best understood as *civil rights* activity.

To say that labor alliances or socioeconomic concerns were part of the struggle for racial justice is an important point, but it is rather less interesting than the claim that *civil rights* was understood to include a commitment to the labor and economic inequality. Yet the former description is a more accurate representation of the nature of what was happening in the 1940s and 1950s. By the time "civil rights" became a label that was widely understood as a synonym for the rights of African Americans, activists, political actors, and jurists generally understood the term narrowly—to exclude precisely what long movement historians now insist on including. The meaning of civil rights when that meaning first coalesced around racial issues was not wholesale opposition to racial inequality. It was not a synonym for "racial justice" or "black freedom." It was a set of legal claims against Jim Crow. It revolved around an antidiscrimination mindset. Once we shift attention from the dynamics of social mobilization and the claims around which mobilized communities rallied to the intersection of their communities and the formal law, disjunctures in the course of racial justice advocacy in the twentieth century become more pronounced. These disjuntures are more readily captured by paying attention to the evolution of the legal categories as understood by past generations.

If scholars are not relying on the usage of the historical actors they are studying, then where are they getting their definitions? Studies of a civil rights tradition or civil rights movement prior to the late 1940s rely on a definition of civil rights that is the construct of the historian.

Consider, for example, Kenneth Mack's studies of black lawyers in the period between World War I and II (2005; 2006; 2012). Mack locates what he describes as an alternative conception of civil rights lawyering in the 1920s and 1930s, one that differs in substantial ways from the *Brown*-inspired model of the civil rights lawyer as fighting against racial discrimination in the courts. In this "formative era for modern civil rights law and politics" (2005, 258, 351) there existed "a quite different idea of the role of civil rights lawyering and politics than is recognized in the traditional literature" (2005, 264). This was a period when black lawyers embraced "vibrant strands of voluntarist and Marxist civil rights politics" (264) along with

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"racial uplift" ideology (272). Although NAACP lawyers eventually became most closely aligned with this now iconic image of the civil rights lawyer, in the interwar period even lawyers working with the NAACP more often than not did not operate in this way. While they competed with Communist-affiliated groups for the loyalties of African Americans, NAACP lawyers of this period supported aspects of their radical agenda.

Mack's key assumption in this important line of scholarship is that African American lawyers who fought against racial injustice were *civil rights* lawyers. From this flows his key argument, that their eclectic legal practice demonstrates the emergence "a new civil rights paradigm" (2006, 38–39). An alternative interpretation of this history, one grounded in the history of the constrained civil rights tradition I have sketched out in this essay, might be that the emergence of the civil rights paradigm occurred when this legal eclecticism that Mack so effectively recreates gave way to a narrower legal practice, focused primarily on equal protection challenges in the courts. After all, it was only in the 1940s and 1950s, when Thurgood Marshall and other lawyers of his generation were able to make a full-time job of winning these kinds of cases in federal courts, that they became identified as "civil rights lawyers."[7]

An analogous dynamic operates in Risa Goluboff's *Lost Promise of Civil Rights* (2007). She defines her subject as "the varieties of civil rights complaints and legal practice in the era before *Brown*" (4). But there is some terminological slippage going on here. Goluboff spends much of the opening of the book on a detailed portrait of the fluid, ambiguous, and inconsistent usage of the term civil rights in the early to mid-1940s. When lawyers and scholars in this period made an effort to discuss any sort of developments in civil rights law, they were as likely to discuss free speech rights or labor rights as they were to discuss racial justice issues. For example, a 1940 article that pronounced "a distinct field of law—that of civil rights—is emerging" went on to discuss rights issues raised by "the super-patriotism of demagogues," "the efforts of militant organized labor," and "the tensions of a world war" with nary a mention of race or racial discrimination (Civil Liberties—A Field of Law 1940, 7). Goluboff recognizes this point (see generally 2007, 16–50). She discusses the article just mentioned, concluding that "it was not obvious during the 1940s, that the rights of racial minorities would come to dominate legal and popular conceptions of civil rights" (16).

While acknowledging this point, Goluboff nonetheless goes on to write as if civil rights indeed was a term for describing racial minority rights. In the 1940s, "civil rights law barely resembled the field as we now know it," she writes. "Lawyers who took the cases of black workers treated as civil rights issues labor-based and economic harms as well as racial ones" (5). To write that in the 1940s "civil rights law barely resembled the field as we now know it" or that lawyers treated certain cases "as civil rights issues" assumes that there was something understood to be *civil rights law*. But one might ask what did it mean to treat something as a "civil rights issue" at that point? Considering the fluidity of the category, it could not mean all

7. It was not until the late 1940s, for example, that the black press began to refer to the pioneering NAACP attorney Charles H. Houston as a "civil rights lawyer" (see, e.g., Eyes Turn 1949).

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that much. When civil rights was a term that could describe labor organizing, free speech, or antidiscrimination work, to say that people understood civil rights to include both economic and racial concerns is to say somewhat less than it might seem. Goluboff seems to assume that any case or line of argument pursued by NAACP lawyers or the lawyers in the Justice Department's Civil Rights Section that involved racial issues are properly classified as *civil rights* work. But this was a time when NAACP lawyers themselves described only some of their work as "civil rights" work; it was a time in which a Civil Rights Section could have little clear conception of what was or was not contained in their title's mission.

The details of *The Lost Promise of Civil Rights* are subtle; Goluboff is a careful guide through the historical material. Her recovery of lines of racial egalitarian legal challenges in the 1940s beyond the equal protection claims that would triumph in *Brown* is one of the most significant contributions in recent legal historical scholarship. She persuasively argues that the 1940s was a critical period of experimentation and possibility for lawyers committed to dismantling Jim Crow. Yet the big takeaway point of the book—that there was some earlier tradition of civil rights that was lost, replaced by our modern, limited conception—risks swallowing much of this subtlety.

The civil rights label is powerful. The choice of the historian to use it to describe racial justice efforts in the decades before *Brown* brings with it certain implications for readers living on the other side of the civil rights era. It implies a degree of self-consciousness and a sense of coherent purpose by those making these claims. And it implies a level of receptivity to these claims on the part of formal legal institutions. These were what distinguished the racial justice claims of the 1950s and 1960s from what came before and what followed. It is less clear that they characterized the legal work of the lawyers featured in these scholarly efforts to locate lost traditions of civil rights in the 1930s and 1940s.

I don't mean to push this point too far. It is just a label, after all. Just because people did not think about what they were doing as necessarily some distinctive "civil rights" work does not mean that they did not think about their work as a coherent project dedicated to advancing racial justice; just because no one envisioned their work as part of a "civil rights movement" does not mean that they did not see themselves as engaged in a shared struggle against racial inequality. In many instances the costs of adopting an ahistorical usage of this term add up to nothing more than some semantic infelicities. But I hope my analysis at least draws attention to what kind of definition of civil rights is operating in these histories of the long civil rights movement, particularly when a central argument of this scholarship is that we today are operating with a distorted or incorrect understanding of civil rights.

CIVIL RIGHTS AS LEGAL HISTORY

Through a comprehensive examination of turn-of-the-century racial justice organizations, Carle's *Defining the Struggle* describes a period in which familiar labels were not always used in familiar ways. It was a period in which black and white

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activists fought for what they described as "civil rights," but they understood this label to describe a relatively narrow, legalistic claim to nondiscrimination in the public sphere. Civil rights was one battlefront in a much larger campaign for racial equality. Building from Carle's research, this essay has attempted to excavate the outlines of a history of civil rights that pushes against currently ascendant scholarly efforts to expand the definition of civil rights to encompass more and more aspects of the black freedom struggle. This alternative conception, which I call the constrained civil rights tradition, is grounded in a long history of activists, political figures, judges, and lawyers using the label as a tool of differentiation. Some were fighting for the cause of racial equality; some were fighting against this cause. But all used this label to draw lines of division—to say, in effect, this is civil rights, but that is not.

The history of this constrained tradition of civil rights complicates the claim that animates the work of legal historians who have embraced the long civil rights movement framework. Civil rights was not transformed or diluted in the 1940s and 1950s, as these accounts would have it. One "civil rights tradition" did not displace another. Those engaged in racial justice activism in the early decades of the twentieth century and into the 1940s did not understand themselves to be participating in a "civil rights movement." Lawyers who used the courts to attack racial inequality did not identify themselves as engaging in a distinctive practice of "civil rights lawyering." There was no sense in this period that this particular legal term referred specifically to the struggle for racial justice.

Our history of civil rights should recognize how past actors, both inside and outside the formal legal system, understood what it meant to fight for civil rights. Yet long movement scholarship is premised on a reconfiguration of civil rights that replaces a historicized understanding of the term with a scholarly construct. The efforts of long movement scholars to extract a forgotten or overlooked understandings of civil rights in the years before *Brown* assume an application of the term—and, by extension, a conceptually unified, coherent category of reform activity—that would be unfamiliar to the historical actors being described. When it comes to giving meaning to this critically important label, long movement scholars too often rely on what they believe civil rights should mean more than what historical actors themselves understood them to mean. Past generations cared about what civil rights meant. We should too. But as historians we have a responsibility to make clear when we are applying our preferred understanding of the term on past actors who operated with a different understanding of what the term meant.

The critical development that gave meaning and significance to talk about civil rights lawyers, legal traditions, and movements was the growing receptiveness of official legal actors to challenges to Jim Crow. The Truman Administration stamped the civil rights label on its package of antilynching, voting rights, and nondiscrimination policies, the Warren Court reconfigured the constitutional landscape when it struck down state segregation policies, and in 1957 Congress began passing a series of increasingly consequential Civil Rights Acts. This was the context in which racial justice activists came to embrace the label as their own. It was an imperfect label, one that activists often chafed against, but it had the value of linking their struggles for racial equality on the ground to the language of public policy

and legal doctrine. From this moment of synergy between formal legal institutions and social agitation the *civil rights* movement was born.

Legal historians who are interested not only in movement mobilization but in the intersection of movements and formal legal institutions would benefit from placing a more precise, historically grounded definition of civil rights at the center of their analysis. The study of legal history engages not only the societal conditions and mobilization dynamics from which rights claims emerge, but the reception of these claims by formal legal institutions.[8] To capture how various actors leveraged legal claims against sources of official government authority requires careful attention to how historical actors understood the nature of these claims. Such a move offers a clearer language with which to describe the place of civil rights reform within the larger struggle for racial equality.

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8. A focal point for what Risa Goluboff (2013) has called the "new civil rights history" is the "the relationship between the many lay and professional actors involved in changing legal conceptions and in the civil rights struggle more generally" (2319). The new civil rights history "emphasizes connections between laypeople and formal law"; it examines "the movement of consciousness, arguments, and doctrines throughout the process of law creation" (2323).

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