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For much of our history men and women frequently occupied separate spaces. Political arenas, courts, and places of public amusement typically were off limits for women. Some of these customs began to break down during the nineteenth century as women commenced speaking publicly to “promiscuous” audiences, claimed rights of participation in economic activities as married women’s property legislation was adopted, and sought access to legal and political forums. But certain places—especially political and legal forums, drinking establishments, and some accommodations on public means of transportation—stubbornly remained male locales through the nineteenth century. [1] It is intriguing that such places were thought of as risky environments for reputable “ladies.” And it is equally intriguing that the risks were thought to come from three primary groups—“othered” people including those of color, immigrants, and the poor, “risqué” women, and, of course, men. Polling places were often described as riotous locations unsuitable for respectable women. Drinking establishments filled with men were treated by “respectable” women as off-limits in order to avoid criticism for socializing with disreputable types and the lower classes. After the Civil War trains and passenger boats began providing first-class ladies’ cars or sections separating respectable women from men traveling without families in tow. In many ways they were the most interesting—and certainly the most relevant to today’s controversies about sexual harassment.

As the nineteenth century unfolded, family members began to disperse as children grew and left home. Opening of western lands for settlement, gradually improving means of travel, and growth of national business enterprises led to increasing interstate travel. Though much of this was male-dominated business travel, women also began moving about—many to see dispersed family and some also for commercial reasons. Women traveling alone raised particular concerns; many thought it unsafe. Railroad and ship companies sought to mollify such fears and gain additional passengers by creating first class sections for single women and families on trains and boats. Occupancy was allowed by women traveling alone or with their husbands, children, or servants. Many states required that public transportation companies provide such accommodations. These “Jane Crow” laws often were described as a necessary aspect of maintaining a civilized society. As Chief Judge Edward Ryan wrote in the well-known 1874 case of *Bass v. Wisconsin*:

The use of railroads for the common carriage of passengers has not only vastly increased travel generally, but has also specially led women to travel without male companions. To such, the protection which is a natural instinct of manhood towards their sex, is specially due by common carriers. And, in view of the crowds of men of all sorts and conditions and habits constantly traveling by railroad, it appears to us to be not only a reasonable regulation, but almost if not quite a humane duty, for railroad companies to appropriate a car of each passenger train primarily for women and men accompanying them; from which men unaccompanied by women should be excluded, and even women or men accompanying women of offensive character or habits; so as to group women of good character on the train together, sheltered as far as practicable from annoyance and insult. It is a severe comment on our civilization that such a regulation should be necessary; but the necessity is patent to all experience and intelligence. [2]

Though the sentiments expressed in *Bass* were motivated by fear of people of color, lower classes, and other “men of all sorts and conditions,” they have a salient ring to contemporary life. The raft of recent stories about sexually aggressive men strongly suggests that women frequently are at risk as they go about their daily routines—whether while traveling or in their workplaces. I have sometimes asked women taking courses in which we studied the late nineteenth century “Jane Crow” transportation cases if they would routinely use “women-only” cars or sections if they were available

today on subways, trains, or buses. Many have reacted with strongly vocalized “yeses.” Such facilities are available in some instances in Japan, India, Egypt, Iran, Brazil, Mexico, Indonesia, the Philippines, Malaysia, and the United Arab Emirates. This list of nations hardly is composed of models of gender openness. But two—Japan^[3] and Mexico—though openly male dominated, provide women-only facilities not out of a desire to segregate the genders, but out of a desire to protect women from aggressive men. Is their willingness to do this simply a confession that men can’t be controlled and that women must sacrifice their convenience in order to protect themselves? Or is it a useful technique for allowing women to occupy less threatening environments while also making a public statement that men need to change their behavior?



Is it time to think about this issue again here in the United States? What if a major subway system like that in New York City provided cars for women only and simultaneously undertook a widespread public relations campaign claiming that the program was designed to protect women from inappropriate behavior by men and that men needed both to change their behavior and to intervene to protect women when they saw other men misbehaving? I suspect a

significant number of women would prefer to ride such cars—a damning but predictable result of the continuing efforts by many men to dominate and control their female co-citizens. Such behavior, as the “Jane Crow” laws confirm, is of long standing. But surely there is some obligation on the part of various public agencies to develop plans to reduce its frequency in contemporary society.^[4]

[1] I have written elsewhere about the way women’s appearance in bars during the temperance crusades of the late nineteenth century impinged upon male prerogatives to claim such spaces for themselves. Richard Chused, *Gendered Space*, 42 U. Fla. L. Rev. 125-161 (1990); Richard Chused, *Courts and Temperance “Ladies,”* 21 Yale J. L. & Feminism 339 (2010).

[2] *Bass v. the Chicago & Northwestern Railway Company*, 36 Wis. 450, 460 (1874).

[3] Below is a picture of such a car. See <https://www.newstatesman.com/staggers/2015/08/jeremy-corbys-women-only-carriages-arguments-and-against> (Visited Jan. 21, 2018).

[4] Recent work suggests that public relations campaigns alone don’t work very well. But teaching people, especially men, to intervene when they see inappropriate behavior does. Claire Cain Miller, *Sexual Harrassment Training Doesn’t Work, But Some Things Do*, The New York Times (Dec. 11, 2017). The Upshot column may be found at <https://www.nytimes.com/2017/12/11/upshot/sexual-harassment-workplace-prevention-effective.html> (Visited Jan. 19, 2018).