

JIM CROW & THE REGULATION OF BOXING IN NEW YORK STATE

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ABSTRACT

This article reviews the shameful history of the color line in boxing, with a particular emphasis on the role of the New York State Athletic Commission. In the wake of African American boxer Jack Johnson's defeat of former champion James Jeffries in 1910 for the heavyweight championship, major race riots broke out throughout the nation.

Following these riots, in 1912, Congress passed legislation banning the interstate transportation of boxing films. The New York State Athletic Commission, the first government body to regulate boxing, in 1913, banned "mixed bouts" between black and white fighters, thereby enshrining Jim Crow into New York State's codes.

The State Attorney General even backed up the State Athletic Commission, by finding that the Commission's broad rule-making power of the Commission empowered the Commission to block fights that could disturb the peace.

The ban on mixed bouts formally ended in June of 1916, but the effect of the ban continued for decades. New York—which had banned boxing in 1917—reauthorized it in 1920, and for some time, mixed bouts were not authorized. What happened in New York was not confined to New York. Its effect was felt throughout the United States and the United Kingdom.

Mixed fights were banned in the United Kingdom for much of the first half of the 20th century. Many states followed New York's example, and it was only in 1965 that Louisiana held a mixed bout.

Jim Crow in the boxing world prevented a generation of African American fighters to reach their full potential. Most poignant was the effect on Hall of Fame black heavyweight Harry Wills, who was unable to reach his goal of fighting Jack Dempsey for the world's heavyweight championship.

INTRODUCTION

It is an obvious statement that the regulation of boxing in the state of New York has been problematic. Over two centuries, it has been at times illegal, at times legal, at times regulated and at times unregulated. Scandals have been an all too frequent feature of the regulatory framework.¹

1. Ian Forman, *Boxing in the Legal Arena*, 3 SPORTS L.J. 75, 76–77 (1996).

Yet New York boxing has been of extreme importance for the overall sport of boxing.² For the first two-thirds of the 20th century, New York City was the center of the boxing world, and Madison Square Garden was its capital. New York was the Mecca of boxing.³ New York through the 1911 Frawley Law also established the first government regulatory body—a state athletic commission—to oversee the sport.⁴ Before the passage of the Frawley Law, boxing was privately controlled, usually by boxing and athletic clubs.⁵

While that athletic commission was terminated in 1917,⁶ when New York State for a three-year period outlawed boxing, the State Athletic Commission had an outsized influence on the governance of boxing throughout the nation.⁷ As the first regulatory commission, in the most populous state, which had the biggest fan interest in boxing, the statute creating the athletic commission and the rules and regulations of the athletic commission were routinely embraced and adopted by other state and their regulatory agencies. The principal focus of this article will be on one of the rules issued by the commission: its rule banning “mixed bouts,” fights between white and black boxers. Through that rule, the State Athletic Commission formally made Jim Crow part of the state’s boxing codes.

2. *See id.*

3. ALEXANDER JOHNSTON, TEN—AND OUT! THE COMPLETE STORY OF THE PRIZE RING IN AMERICA 187 (rev. ed. 1927).

4. 1911 N.Y. Laws 2081–82. The law was named for its sponsor, James J. Frawley, a Democrat from Manhattan. *See* Peter E. Millspaugh, *The Federal Regulation of Professional Boxing: Will Congress Answer the Bell?*, 19 SETON HALL LEGIS. J. 33, 40 (1994). New York led the way. Isai Molina, *Boxing: One Last Cry for National Uniformity*, 1 ARIZ. ST. SPORTS & ENT. L. J. 1,7 (2011) (New York’s Frawley Law of 1911 was the first attempt to create a state athletic commission).

5. *Take Charge August 25*, WASH. POST, Aug. 1, 1911.

6. 1917 N.Y. Laws 1598. Boxing was reinstated in New York in 1920 by the Walker Law. 1920 N.Y. Laws 2333. That law initially created a “boxing commission” to govern boxing in New York. *Id.* at 2334. In 1921, the legislature changed the name of the boxing commission to the “athletic commission,” 1921 N.Y. Laws 2505, and it remains the athletic commission to this day.

7. *See Not a Good Model*, N.Y. TRIB., Dec. 23, 1912, at 16 (The athletic commission “announces that it is such an admirable statute that citizens of other states are deluging the office of the commission with inquiries about it, preparatory to making it a model for legislation in their commonwealths.”). *See also Big Improvement Shown in Boxing in New York State*, NASHVILLE TENNESSEAN, May 10, 1912. By 1917, twenty-three states had legalized boxing under state or local control. *Cross Counter Fitz Unjustly Accused of Winning Through Luck*, N.Y. SUN, Oct. 21, 1917, at 20.

I. THE STATE OF NEW YORK BOXING LAW BEFORE 1911

Boxing, or prizefighting, as it was often called, was not in and of itself banned under the common law.⁸ As a general rule, engaging in prize fights would be considered assault, battery, or a breach of the peace. The death of Thomas McCoy in 1842 was probably the first high-profile death of a fighter in New York. McCoy died after being knocked out in a fight that lasted 120 rounds.⁹ 18 people involved in the fight were indicted for manslaughter. Eleven “were also indicted for ‘riot and affray.’”¹⁰ All were found guilty.¹¹ The longest sentence was imposed on James “Yankee” Sullivan, a famous fighter who had worked during the fight for McCoy’s opponent. Sullivan received a two-year sentence.¹² Sullivan was conditionally pardoned in September of 1843 by Governor Bouck upon the condition that he not engage in any prize fights.¹³ This was a condition regularly broken by Yankee Sullivan.

The first New York specific law dealing with boxing was enacted in 1856.¹⁴ It made instigating, promoting, carrying on, and engaging in a premeditated prize fight a crime which could lead to a jail term of up to a year or by a fine not exceeding \$1,000.¹⁵

In 1859, the legislature broadened the law against prize fights. Encouraging or instigating a fight, while in New York, was criminal even if the fight as to be held outside the state.¹⁶ Training or assisting in the training of a prize fighter in New York—whether or not the future fight was to be held in New York State—was made criminal.¹⁷

8. *People ex rel. Weiner v. Barr*, 225 N.Y.S. 346, 348 (Sup. Ct. N.Y. Cnty. 1927), *rev'd on other grounds*, 228 A.D. 198 (N.Y. App. Div. 1st Dep't 1928). *See also* *Zwirn v. Galento*, 43 N.E.2d 474, 476 (N.Y. 1942).

9. *The Ring*, SPIRIT OF THE TIMES, Sept. 17, 1842, at 339, 346; *The Slaughter of McCoy*, N.Y. TRIB., Sept. 20, 1842.

10. Barak Y. Orbach, *Prizefighting and the Birth of Movie Censorship*, 21 YALE J. L. & HUMANS. 251, 263 (2009) (citation omitted).

11. *Id.*

12. *Rearrest of Yankee Sullivan*, N.Y. TIMES, Dec. 2, 1853, at 3.

13. *See id.*; *The Contemplated Prize Fight*, BALTIMORE SUN, Feb. 5, 1849; *Yankee Sullivan Pardoned*, BROOKLYN EAGLE, Sept. 4, 1843, at 2.

14. Elmer M. Million, *The Enforceability of Prize Fight Statutes*, 27 KY. L.J. 152, 158 (1939).

15. 1856 N.Y. Sess. Laws 131 (McKinney). The legislation also criminalized promoting and instigating premeditated fight among animals. *Id.*

16. 1859 N.Y. Sess. Laws 63 (McKinney).

17. *Id.*

[E]very person who shall in this state train or assist any person in training for any such contention or fight, and every inhabitant of this state who shall go out of this state to engage or take part in, or to be present at such contention or fight, shall be guilty of a misdemeanor.¹⁸

The penalties for violation of the prize fighting law were enhanced. The guilty party could be fined up to \$1,000 and/or imprisoned for a period of six months to a year.¹⁹

Other states followed, and by 1894, thirty-seven states had banned boxing.²⁰ While boxing may have been de jure illegal, there were numerous boxing matches conducted illegally.²¹ The aforementioned Yankee Sullivan in 1842 fought both at Hart's Island near Pelham, New York and in Staten Island.²²

When boxing became more popular in the 1880s, especially after John L. Sullivan became heavyweight champion, it was embraced by Democratic urban political leaders in New York. Politically connected fight promoters—protected by these politicians—began to stage fights

18. *Id.* The extraterritoriality issues involved with the 1859 New York prize fighting law bring to mind state enacted restrictions limiting individuals inside that state seeking abortions outside that particular state. See generally Alan Howard, *Fundamental Rights Versus Fundamental Wrongs: What Does the U.S. Constitution Say About State Regulation of Out-of-State Abortions?*, 51 ST. LOUIS U. L. J. 797, 797–98 (2007); Andrew J. King-Ries, *Extraterritoriality of Restrictive State Abortion Laws: States Can Abort Plans to Abort at Home but Not Abroad*, 70 WASH. U. L. Q. 1205, 1206–07 (1992). Some of the out-of-state features of the anti-prize fight law survived the legalization of boxing in New York. Until 1967 when the current Penal Law went into effect, Section 1710 of the former Penal Law read in part “A person who, within this state, engages in, instigates, aids, encourages or does any act to further a contention, or fight, without weapons, between two or more persons, or a fight commonly called a ring or prize-fight, either within or without the state . . . is guilty of a misdemeanor.” For an interesting case looking at the workings of article 164 of the former Penal Law which contained the anti-prize fight provisions, see *People v. Solomon*, 72 N.E.2d 163, 164 (N.Y. 1947).

19. 1859 N.Y. Laws 63. See also GEORGE W. WALLING, RECOLLECTIONS OF A NEW YORK CHIEF OF POLICE 373 (1887). “The Penal Code of the State of New York contains not a few sections relating to the ‘manly art of self-defence.’ First, prize-fighting of every description is expressly forbidden, and the dire penalties consequent upon a breach of this law are fully set forth. There are other sections prohibiting any one from leaving the State with even the intention of engaging in a prize-fight. The punishment for this offence is very severe.” *Id.*

20. STEVEN A. RIESS, SPORT IN INDUSTRIAL AMERICA, 1850–1920 154 (2d ed. 2013).

21. See A. WINCH, LIFE AND BATTLES OF YANKEE SULLIVAN 218, 23 (1854).

22. *Id.* One of Sullivan's most famous fights occurred in 1853 when he lost the heavyweight championship against John Morrissey in Boston Corner, Massachusetts. While Boston Corner was then in Massachusetts on the New York border, it is now in Columbia County in New York State.

in New York.²³ Future heavyweight champion Bob Fitzsimmons fought in de jure illegal fights throughout New York State, and was once found innocent of the charge of manslaughter, after a death occurred in a sparring match in which he participated in Syracuse.²⁴ Bantamweight champion George Dixon similarly fought in numerous illegal matches in New York State, Coney Island became a favored protected area for what were illegal boxing matches.²⁵ Numerous major fights were staged in Coney Island where political leaders protected the matches from the police.²⁶

In 1896, with so much illegal boxing activity taking place in New York, the legislature decided to legalize and tax boxing in the Horton Law.²⁷ Boxing was still criminal, but so-called sparring exhibitions could be held “by a domestic incorporated athletic association in a building leased by it for athletic purposes only for at least one year,” or in a building owned and occupied by such association.²⁸ The Horton Law spurred an increase in both boxing matches and gambling.²⁹ Under the law, three major heavyweight championship fights were held in Coney Island.³⁰

In 1900, the legislature repealed the Horton Law and replaced it with the Lewis Law, which returned the boxing law to where it was before 1896.³¹ In advocating for repeal of the Horton Law, Governor Theodore Roosevelt wrote:

Boxing is a fine sport; but this affords no justification of prize fighting, any more than the fact that a cross country run or a ride on a wheel is healthy justifies such a demoralizing exhibition as a six-days race. When any sport is carried on primarily for money—that is, as a business—it is in danger of losing

23. See RIESS, *supra* note 20, at 155.

24. See *People v. Fitzsimmons*, 34 N.Y.S. 1102, 1104 (Ct. Sess. Onondaga Cnty. 1895); *Fitzsimmons' Fatal Blow*, N. Y. HERALD, Nov. 18, 1894, at 12.

25. *M'Kane's New Paradise*, N.Y. TIMES, May 10, 1892.

26. RIESS, *supra* note 20, at 156.

27. See 1896 N.Y. Laws 253–54.

28. 1896 N.Y. Laws 254.

29. *Horton Law Repeal Bill*, N.Y. TIMES, Mar. 2, 1900.

30. James J. Jeffries won three heavyweight championship fights at Coney Island 1899–1900. See *BoxRec: James J. Jeffries*, <https://boxrec.com/en/box-pro/9022> (last visited Jan. 29, 2024). See also *Champions of Fifty Years*, N.Y. TIMES, Jul. 3, 1910, at 8.

31. *Battle of the Houses*, ROCHESTER DEMOCRAT AND CHRON., Mar. 5, 1900. See also *State Laws-In Effect Sept. 1*, N.Y. TIMES, Aug. 12, 1900, at 2.

much that is valuable, and of acquiring some exceedingly undesirable characteristics.³²

The Lewis Law failed to curtail boxing. In fact, “boxing maintained a subterranean existence in saloon bars, back rooms, and private ‘membership’ clubs.”³³ And in 1911 the legislature—then totally controlled by the Democrats—passed the Frawley Law to tax and fully regulate boxing.

II. THE FRAWLEY LAW

The Frawley Law created a regulatory structure that was far different than anything previously seen in New York or in other states. It created “a three-man [state] athletic commission” appointed by the governor which would oversee boxing.³⁴ The commission was “vested with the sole direction, management, control, and jurisdiction over all . . . boxing and sparring matches and exhibitions to be conducted, held or given within the state” by any club, corporation, or association.³⁵ Entities organizing and holding boxing matches had to be licensed by the athletic commission. Bouts could not exceed ten rounds, and all boxers had to wear gloves that were at least eight ounces each.³⁶ Most significantly, the athletic commission was given broad rulemaking power and could “make such rules for the administration of their office, not inconsistent herewith, as they may deem expedient.”³⁷ As a result, the commission was “empowered to make such rules for the administration of its duties not inconsistent with the statute as it may deem expedient. Every license which it issues is subject to such rules and regulations as it prescribes.”³⁸

With this significant rule making authority, the State Athletic Commission went about creating the rules of boxing in New York. The State Athletic Commission, under the Frawley Law, is mostly remembered for promulgating a rule that there could be no official decision for fights that did not end in knockouts or were otherwise stopped

32. Gov. Theodore Roosevelt, *Public Papers of Theodore Roosevelt*, Governor’s Annual Message 39-40 (1900).

33. Matthew Taylor, “*The Global Ring? Boxing, Mobility, and Transnational Networks in the Anglophone World, 1890-1914*,” 8 *J. GLOB. HIST.* 231, 236 (2013).

34. *Id.*

35. N.Y. Unconsol. Law § 8906(1) (McKinney 2003).

36. *See id.* § 8906(2).

37. *Id.* § 8901.

38. *Fitzsimmons v. N.Y. State Athletic Comm’n*, 15 Misc. 2d 831, 835 (N.Y. Sup. Ct. 1914), *aff’d*, 147 N.Y.S 1111, 1111 (App. Div. 1st Dep’t 1914).

by the referee. Thus, if a fight went the scheduled distance of rounds, there was no winner. The rule simply stated, “[n]o decision shall be rendered by the referee.”³⁹

There were some legitimate reasons for this rule. It avoided the possibility of questionable and highly subjective—if not corrupt—judgments about who won the fight.⁴⁰ Since most fights were likely to go the distance and not have winners, it figured to discourage people from gambling on the fights. It would be hard to wager on a fight that produced no winner.

In practice however, the non-decision policy turned farcical.⁴¹ “As no official decision was given, an uninspired fighter could lolly-gag through a match without concern that his record would be blemished.”⁴² A champion knew that, as long as he was not knocked out, he could not lose his title. Titles rarely passed under the Frawley Law. “[M]any boxers were able to stall through ten-round fights while the fans howled for action.”⁴³

Gambling was not curtailed. Gambling continued as people made bets decided by the winner as determined by certain newspapers.⁴⁴ It became the era of the so-called newspaper decision.⁴⁵

Whatever the drawbacks of the Frawley Law and its rules, boxing matches proliferated throughout New York State. Under the Frawley Law, from November 1911 through November 1912, gate receipts at New York boxing matches were nearly one million dollars, making the sport only second to baseball in terms of popularity.⁴⁶ By 1913, there were approximately 90 boxing clubs in the state, and “New York

39. STATE OF N.Y., SECOND ANNUAL REPORT OF THE STATE ATHLETIC COMMISSION, S. 62, at 16 (1913).

40. *See Governor Dix Will Oppose Fight Decisions*, ALB. EVENING J., Nov. 20, 1911, at 6 (describing the potential for corruption if the rule were otherwise).

41. *See* JOHNSTON, *supra* note 3, at 260; *see also Revised Verdicts Not Unknown in Wrestling and Boxing Games*, ROCHESTER DEMOCRAT & CHRON., Mar. 5, 1919, at 21 (calling the Frawley Law a “decisionless farce”).

42. ARNE K. LANG, PRIZEFIGHTING: AN AMERICAN HISTORY 50 (2008).

43. *Comment on Current Events in Sports*, N.Y. TIMES, Apr. 26, 1920, at 15.

44. DONALD DEWEY, RAY ARCEL: A BOXING BIOGRAPHY 44 (2012).

45. Robert Edgren, the sports columnist at the New York World, was often the person relied on to make the newspaper decision. “When the law did not permit the giving of decisions in fights, the wide world was willing to accept the judgment of Bob Edgren in deciding wagers made.” *Bob Edgren Dead; Noted Cartoonist*, N.Y. TIMES, Sept. 11, 1939, at 19.

46. *Fate of Boxing Game Hangs in Balance*, SAN FRANCISCO CALL AND POST, Apr. 27, 1913, at 61.

City alone hosted an average of twenty boxing shows per week.”⁴⁷ Both white fighters and black fighters were able to find bouts under the Frawley Law. They did not, however, under the Frawley Law, fight one another.

III. THE RISE OF BLACK PRIZE FIGHTERS

The late 19th and early 20th century also produced the first black boxing champions.⁴⁸ There was the Canadian-born George Dixon who won the bantamweight championship in 1890.⁴⁹ Joe Walcott from Barbados became the welterweight champion in 1901.⁵⁰ Joe Gans became the first African American to win a championship when he became the lightweight champion in 1902, and Jack Johnson became the heavyweight champion in 1908.⁵¹ Numerous top black heavyweights such as George Godfrey, Peter Jackson, Charles Hadley, Frank Childs, George Byers, and Morris Grant, in the era before Johnson, were denied the ability to fight for the championship.⁵²

Black fighters faced endless harassment and discrimination.⁵³ Fights between black and whites happened on occasion, and they occurred fairly frequently in New York State in the 1890’s during the era of the Horton Law.⁵⁴ On the whole, however, they were held irregularly,⁵⁵ and many white fighters would draw the color line and refuse

47. Sen. John McCain & Ken Nahigian, *A Fighting Chance for Professional Boxing*, 15 STAN. L. & POL’Y REV. 7, 10 (2004); see also JOHNSTON, *supra* note 3, at 187.

48. In the early 19th century, America’s first heavyweight contender was the ex-slave Tom Molineaux. He likely was cheated out of the world championship in 1810 in a fight against heavyweight champion Tom Cribb. BILL CALOGERO, *TOM MOLINEAUX FROM BONDAGE TO BADDEST MAN ON THE PLANET* 15, 81 (2015); see also *Tom Molyneaux Was First Negro to Make Ring Grade*, PHILA. TRIB., Dec. 31, 1931, at 10.

49. See generally Jason A. Winders, *‘Fought the Good Fight, Finished My Course’: George Dixon Amid the Rising Tide of Jim Crow America* (2016) (Ph.D. dissertation, The University of Western Ontario).

50. See Francine Sanders Romero, *“There Are Only White Champions”: The Rise and Demise of Segregated Boxing*, 108 THE SW. HIST. Q. 26, 28 (2004).

51. *Id.*

52. See generally MARK ALLEN BAKER, *THE WORLD COLORED HEAVYWEIGHT CHAMPIONSHIP, 1876-1937* 216–18 (2020).

53. WILLIAM GILDEA, *THE LONGEST FIGHT* 4 (2012).

54. See Joe Vila, *Setting the Pace*, N.Y. SUN, May 12, 1924, at 24.

55. *Id.* “In the era of Jim Crow and the Ku Klux Klan, . . . an aggressive black fighter who flattened white opponents quickly wouldn’t enjoy a profitable or long career—or even a long life.” NED BEAUMONT, *THE SAVAGE SCIENCE OF STREETFIGHTING* 75 (2001).

to fight blacks. Many of the white champions were irreconcilable racists. The white heavyweight champion John L. Sullivan repeatedly refused to fight the great Australian black heavyweight, Peter Jackson.⁵⁶ Sullivan stated, “I shall not fight a negro. I never have. I never shall.”⁵⁷ Sullivan’s position “built an insurmountable barrier for black boxers,”⁵⁸ and no black boxer would fight for the heavyweight championship from the beginning of Sullivan’s reign in 1882 until 1908.⁵⁹ After Jack Johnson’s reign as heavyweight champion ended in 1915, no black man fought for the heavyweight championship until Joe Louis defeated James Braddock in 1937.⁶⁰ So for a period of twenty-five years, Jack Johnson was a participant in every fight where a black man fought for the heavyweight championship.⁶¹

Lightweight champion Battling Nelson said, “You may think I am vicious when I am in the ring with a white man, but you should see men when I am fighting a negro. I never have and never shall.”⁶² Many top white fighters simply drew the color line. These included John L. Sullivan, Tom Sharkey, Packy McFarland, Stanley Ketchel, Kid McCoy, and Billy Papke.⁶³ Other white heavyweights, like James

56. See generally Adam J. Pollack, JOHN L. SULLIVAN (2006) (providing biographical details of John Sullivan’s life and fighting career).

57. *Here’s Your Chance*, ATLANTA CONST., Mar. 6, 1892, at 15. *Id.* at 212; MICHAEL T. ISENBERG, JOHN L. SULLIVAN AND HIS AMERICA 293 (1988). See also Arthur T. Lumley, *John L. Sullivan’s Creed No White Man Should Fight A Negro*, NAT’L POLICE GAZETTE, Dec. 1960, at 21; *Draws the Color Line*, WASH. POST, Mar. 6, 1892, at 1. See generally Gregory Bond, *Jim Crow at Play: Race, Manliness, and the Color Line in American Sports, 1876-1916*, 270–71 (2008) (Ph.D. dissertation, University of Wisconsin- Madison), for additional racist sentiments expressed by Sullivan.

58. LOUIS MOORE, *I FIGHT FOR A LIVING: BOXING AND THE BATTLE FOR BLACK MANHOOD, 1880-1915*, at 94 (2017).

59. *Id.* at 94–95. In explaining the absence of any black heavyweight fights, Arthur Ashe wrote, “[t]he most plausible answer was the general feeling throughout the nation around 1900 that blacks were socially, physically and mentally inferior to whites, even divinely ordained so.” ARTHUR ASHE, *A HARD ROAD TO GLORY, A HISTORY OF THE AFRICAN AMERICAN ATHLETE 1619-1918*, at 31 (1988).

60. MOORE, *supra* note 58, at 159.

61. See JOHN LARDNER, *WHITE HOPES AND OTHER TIGERS* 20 (1951). (Statement of famed sportswriter John Lardner) (“Race honor became an issue only when the scales reached 175 pounds.”); see also Earl Gustkey, *80 Years Ago, the Truth Hurt*, L.A. TIMES, July 8, 1990. *But see* Westbrook Pegler, *Jack Johnson’s Reputation Bars Race From Ring*, CHI. TRIB., Jan. 28, 1930, (columnist Westbrook Pegler blaming Jack Johnson for the color line stating that a black fighter could not fight for the championship “because the last Negro who held it declared social war on the white race, which happens to be a bit touchy about certain matters.”); see also *Colored Boxers Blame Johnson*, NAT’L POLICE GAZETTE, July 10, 1915, at 11.

62. GILDEA, *supra* note 53, at 52.

63. *Pugs Draw Color Line*, WASH. POST, Jan. 17, 1909, at S2.

Jeffries, Jack Dempsey, and James Corbett, fought black fighters on their way to winning their championships but would not fight blacks once they won their championships.⁶⁴ Jess Willard may have beaten Jack Johnson to win the heavyweight title, but after his victory, he too drew the color line.⁶⁵

The New York Times, before the 1910 heavyweight championship fight of Jack Johnson and James Jeffries editorialized about mixed fights:

It is not well that the two races should meet in formally arranged and widely advertised competition when the conditions are such that victory and defeat are decided by the possession on one side or the other of a superiority so trivial as that given by weight, strength, and agility . . . Even those who have an absurdly exaggerated horror of prize fighting . . . should gently warm in their sensitive minds a little hope that the white man may not lose.⁶⁶

Thirteen years later, the Philadelphia Inquirer could still write: “Since the defeat of Jeffries by Jack Johnson, there has been an undercurrent of feeling among the Caucasians that another such fare would hardly be palatable. Even in this city, Director Cortelyou with commendable sense and administration ruled long ago black-and-tan fights were taboo.”⁶⁷

The racial tensions increased drastically after black heavyweight champion Jack Johnson defeated former champion James Jeffries in an inter-racial heavyweight championship fight on July 4, 1910, in Reno, Nevada.⁶⁸ The stunning defeat of Jeffries—at least to white America—provoked major riots throughout the nation.⁶⁹ There were

64. *Id.* Corbett said, “No. I cannot fight a colored man! It would not be proper while I am the champion!”

65. ASHE, *supra* note 59, at 41. Willard in 1921 was quoted as saying, “There should be no mixed bouts for the reason that they cause bad blood between the white and the colored races. I won the world’s heavyweight championship from Jack Johnson and then drew the color line, just as Dempsey has done.” Joe Vila, *Willard Confident He Can Regain Crown*, PHILA. INQUIRER, Jan. 27, 1921, at 12. Willard went so far as to ban any black fighter from his training camp and to ban black boxers from even appearing on his fight cards. “Queensberry Rules May Govern Big Bout on Saturday Night,” *Brooklyn Eagle*, March 23, 1916.

66. *Topics of the Times*, N.Y. TIMES, Nov. 1, 1909, at 10.

67. Gordon Mackay, *New Jersey Governor Stopped Bunco Bout*, PHILA. INQUIRER, Feb. 2, 1923, at 19.

68. *Race Riots Follow Negro’s Ring Victory*, BALT. SUN, July 6, 2010, at 1.

69. *Id.*; *Racial Clashes Follow Victory of Jack Johnson*, ATLANTA CONST., July 5, 2010, at 1.

riots throughout the nation.⁷⁰ The New York Times reported ten deaths as of July 6.⁷¹ It was eventually estimated that at least fourteen blacks were lynched, shot or killed.⁷² Former president Theodore Roosevelt said, “[The] very unfortunate display of racial antagonism . . . [should] guarantee that this is the last prize fight to take place in the United States.”⁷³

One immediate aftereffect of the fight and the ensuing riots was the banning of movies of boxing fights. It was believed by many that the display of the Johnson-Jeffries fight film had helped spur on the race riots.⁷⁴ Municipal officials in cities—including mayors and police officials—barred the showing of the Johnson-Jeffries fight film.⁷⁵ In 1912, Congress passed legislation to ban the interstate transportation of boxing films.⁷⁶

While proponents of banning mixed bouts tended to cast their arguments as efforts to prevent racial unrest, it is virtually impossible to view the ban as being anything other than one grounded in racism and

70. *Id.* See *Arrests In Washington*, N.Y. TIMES, July 6, 1910. When George Dixon defeated Jack Skelly for the bantamweight championship in New Orleans in 1892, the fight “sparked racial unrest among the city fathers and almost immediately ended mixed-race fighting in the city for a half century.” Winders, *supra* note 49, at 6.

71. *Bar Fight Pictures to Avoid Race Riots*, N.Y. TIMES, July 6, 1910. See also *Death Toll in Race Riots Is Heavy*, SAN FRANCISCO CHRONICLE, July 6, 1910, at 1.

72. GRAEME KENT, *THE GREAT WHITE HOPES* 84-85 (2005). Kent adds that a ten-year-old Louis Armstrong had to flee the streets of New Orleans to avoid the race riots that resulted from the Johnson- Jeffries fight.

73. Theodore Roosevelt, *The Recent Prize Fight*, THE OUTLOOK, July 16, 1910. See also *Condemns Prizefighting*, N.Y. TRIBUNE, July 14, 1910.

74. *Fight-Picture Ban Is Now Widespread*, N.Y. TIMES, July 7, 1910.

75. See *Fight Pictures, Condemned*, BALT. SUN, July 11, 1910, at 2; *Fight Film Men Will Bow To Law*, CHIC. TRIB., July 8, 1910, at 5; *Big Move to Bar Fight Picture*, SAN FRANCISCO CHRON., July 6, 1910, at 2. See generally Bond, *supra* note 57, at 382-84 (discussing the ban on fight pictures around the country.)

76. 37 Stat. 240, 76th Cong. (1940) (enacted); See Ralph O. Willguss, *Pictorial Representations of Prize Fights*, 6 N.Y. L. REV. 7 (1928). In the debate on the bill to ban the interstate distribution of boxing films in the House of Representatives, Congressman Seaborn Rodenberry responding to a question about boxing matches between blacks and whites said, “No man descended from the old Saxon race can look upon that kind of a contest without abhorrence and disgust.” Laurence Laufer, *Uniform Health and Safety Standards for Professional Boxing: A Problem in Search of a Federal Solution*, 15 COLUM. HUM. RTS. L. REV. 259, 271 (1984); 48 CONG REC. S. 9305 (daily ed. July 19, 1912) (statement of Sen. Rodenberry). Rodenberry in 1913 proposed a constitutional amendment to ban miscegenation throughout the United States. The ban on interstate distribution of boxing films was not lifted until 1940. Pub. L. 76-673, 54 Stat. 686 (June 29, 1940).

a threat to white supremacy.⁷⁷ On the other hand, mixed bouts had the potential for huge public interest and an enormous box office. Two of the most celebrated matches of the early 20th century were the Johnson-Jeffries heavyweight fight in 1910 and the first fight between Joe Gans and Battling Nelson in 1906.⁷⁸ Racism sold tickets.

The great tennis player and sports historian Arthur Ashe has written, “No sport has had as profound an effect on the lives of African Americans as boxing.”⁷⁹ Much of that effect for the first quarter of the 20th century was that African Americans did not belong in the same ring as whites.

IV. NEW YORK STATE FORMALLY BANS MIXED BOUTS

After Jack Johnson became champion, the move was on to have the government itself ban mixed bouts. Johnson was extraordinarily hated by white America.⁸⁰ Johnson’s liaisons with white women, his perceived extravagance and his lack of respect, if not disdain, for white Americans fueled this animosity.⁸¹ “Johnson’s lifestyle, especially his penchant for ignoring social taboos, was an affront to many Americans.”⁸² Segregationists would argue that “[i]f Johnson had not had access to integrated boxing matches in the first place [...] the subsequent problems with his championship would have been avoided.”⁸³ The secretary to the Wisconsin Athletic Commission commented in 1924, “I suppose that the present law was created some time ago when we had a colored champion whose conduct was very unbecoming so far as the white women were concerned, and it did create a lot of hatred between the whites and the blacks, pertaining to fights.”⁸⁴

77. In 1902, the Los Angeles Times advised its readers that Jack Johnson was not a threat to whites but was just “a good-natured black animal.” Lem Satterfield and Jeff Barker, *PBS Special Tells How Johnson Fought off Ropes of Prejudice*, BALTIMORE SUN, (Jan. 17, 2005).

78. See John L. Smith, *1906 Gans-Nelson Fight Was One for the Ages*, LAS VEGAS REV. J., Sept. 20, 2014.

79. Ashe, *supra* note 59, at 17.

80. See James Harris, *Jack Johnson—Ring’s Most Hated Boxer*, AFRO-AMERICAN, Oct. 25, 1947, at M5.

81. GEORGE B. KIRSCH, ET AL., ENCYCLOPEDIA OF ETHNICITY AND SPORTS IN THE UNITED STATES 263 (2000).

82. *Id.* at 8.

83. Bond, *supra* note 57, at 387.

84. *Anti “Block-Booking” and “Blend-Selling” in the Leasing of Motion-Picture Films: Legalizing Transportation of Prize-Fights Films: Hearings Before a Subcomm. of the Comm. of Interstate Com., 76th Cong., 54 (1939)* (statement of Fred Saddy, Sec’y of State of the Athletic Comm’n of Wis.).

The rule making authority granted to the New York Athletic Commission by statute gave the commission the ability to control the conduct of boxing.⁸⁵ The commission initially in 1911 issued individual ad hoc rules. In 1912, however, the commission established a unified code of rules for boxing. “For the first time in the history of boxing in this state, and perhaps the country, rules for the government and regulation of the sport have been laid down.”⁸⁶ These were the “first composite set of rules for boxing in the State of New York.”⁸⁷ Given the preeminence of New York State in boxing, it was anticipated that New York’s new rules would be replicated in other United States jurisdictions⁸⁸ and throughout the world.⁸⁹

The new rules established eight weight classes for boxing.⁹⁰ The referee was given general supervision over the fight and had to be inside the ring during the course of the fight.⁹¹ Fighters were to be examined by a physician before the fight, and a physician was to be present during the fight.⁹² The fighters were to be weighed before the ring, and in bouts involving lightweights (fighters under 135 pounds) there could not be more than a ten-pound difference in the weight of the fighters.⁹³ Fighters had to be at least eighteen years of age.⁹⁴ Gloves had to be new and could not be twisted or in any way manipulated.⁹⁵ Kidney punches were forbidden, and punching while breaking from clinches was also banned.⁹⁶

In a forward-thinking rule, the Commission banned the “battle royal.” As written, the rule banned “all matches or exhibitions in which more than two principals appear in the ring at the same time, commonly called a battle royal exhibition.”⁹⁷ In practice, however, the

85. 1911 N.Y. Laws 2081–82.

86. *New Rules for Boxing*, N.Y. TRIB., Dec. 23, 1912, at 10.

87. *Boxing Weights by the Commission*, N.Y. TIMES, Dec. 23, 1912, at 7.

88. Harry Bullion, *Boxing Game Is Undergoing Some Radical Changes Now*, DETROIT FREE PRESS, Dec. 24, 1912, at 12; *New Rules for New York Contests*, CINCINNATI ENQUIRER, Dec. 23, 1912, at 8; *Eight Boxing Weights Now for New York*, DETROIT TIMES, Dec. 23, 1912, at 1.

89. *Boxing Commissioners Make Sweeping Reform in Queensberry Code*, N.Y. WORLD, Dec. 23, 1912, at 12 (“It may not be long before the entire country and maybe France and other European countries, adopt the new code.”).

90. *New Rules for Boxing*, N.Y. TRIB., Dec. 23, 1912, at 10.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *New Rules for Boxing*, N.Y. TRIB., Dec. 23, 1912, at 10.

96. *Id.*

97. *Id.*

battle royal was not so nondescript. It was an abhorrent spectacle. The battle royal was “a free-for-all that featured a number of African-American men, who were often blindfolded, fighting over coins thrown into the ring by the largely white spectators. The last man standing was the winner.”⁹⁸

While the initial codified rules were silent about the issue of mixed bouts, the Athletic Commission had apparently discussed the mixed bouts issue in its meetings.⁹⁹ Slightly more than a month later, in February of 1913, the Athletic Commission amended its rules to ban mixed bouts.¹⁰⁰ Future fights between blacks and whites would be prohibited.¹⁰¹ The rule stated, “Contests between negroes and white persons, otherwise known as mixed bouts, are strictly prohibited.”¹⁰² Evidently, there was considerable public sentiment in support of banning mixed bouts,¹⁰³ and there was, in reality, little

98. Brian D. Bunk, *Harry Wills and the Image of the Black Boxer from Jack Johnson to Joe Louis*, 39 J. SPORT HIST. 63, 79 (Spring 2012); see generally Andrew M. Kaye, “*Battle Blind*”: Atlanta’s Taste for Black Boxing in the Early Twentieth Century, 28 J. SPORT HIST. 217 (Summer 2001) (explaining the opening chapter in Ralph Ellison’s novel *Invisible Man* is about the protagonist’s participation in a battle royal. The Hall of Fame boxer Beau Jack got his start fighting in battle royals in Georgia).

99. See *Plan to Bar Mixed Bouts: New York Board May Stop Matches Between Whites and Negroes*, WASH. POST, Dec. 2, 1911, at 9.

100. *No More Mixed Bouts*, N.Y. SUN, Feb. 6, 1913, at 11.

101. *Id.*; *Mixed Bouts Are Tabooed*, ELMIRA STAR-GAZETTE, Feb. 6, 1913, at 8; See *White Men May Not Box Negroes Here*, N.Y. TIMES, Feb. 6, 2013 (The New York Times commented, “Mixed bouts have been under discussion at previous meetings of the Commission, but not until yesterday was any definite action taken. Although the exact vote on the question was not announced officially, it is understood that all three members of the commission went on record as favoring the new rule). See *Select Boxing Referees*, N.Y. TRIB., Feb. 6, 1913 (The New York Tribune gave the ban on mixed bouts one small paragraph in its overall story of the meeting of the Athletic Commission).

102. “Rules and Regulations for the Government of Boxing in the State of New York,” Part II, Rule 34, *Second Annual Report of the State Athletic Commission*, 1913.

103. See *Negro Boxers Losing Grip in Ring*, N.Y. TRIB., Jan. 17, 1915 (There was a “feeling against so-called mixed bouts throughout the country”). See also Robert Edgren, *England Has Finally Seen Importance of Winning Team of Athletes*, BUFFALO EVENING NEWS, Aug. 22, 1913, at 10. See also Nat Fleischer, *Black Dynamite: The Story of the Negro in the Prize Ring from 1782 to 1938*, 100, (1947) (“No mixed bouts. The public doesn’t want them.” The boxing historian Nat Fleischer wrote that the riots after the Johnson-Jeffries “soured the public for many years on mixed bouts”). Louis C., Bandler, *Sportland*, N.Y. CALL, Oct. 17,

newspaper attention paid to this rule. The few articles that reported on the mixed bout ban generally had a one or two paragraph description of the new rule.¹⁰⁴

Not unexpectedly, the New York rule was basically followed throughout the nation. "So long as New York bars mixed bouts, promoters in all parts of the United States are satisfied to cut them out. What influence is at work with the Boxing Commission?"¹⁰⁵ States like Minnesota and Wisconsin copied the New York mixed bouts rule verbatim.¹⁰⁶ New Jersey's first boxing rules banned mixed bouts.¹⁰⁷ Wisconsin, for a time, even banned all blacks from participating in any boxing matches.¹⁰⁸

V. THE AFTERMATH OF THE MIXED BOUT RULE IN NEW YORK

While there was seemingly little controversy when the commission promulgated the mixed bouts ban, that changed later in that year. Promoters proposed a heavyweight fight between African American and future Hall of Fame fighter Sam Langford and a potential great white hope in Ed "Gunboat" Smith at Madison Square Garden for September 25, 1913.¹⁰⁹ There was a belief that with Jack Johnson in Europe, the Commission would rescind its rule.¹¹⁰

1916 (The socialist newspaper the New York Call claimed that it was the only newspaper in New York that opposed the ban on mixed bouts).

104. See e.g. "Mixed Bouts" Prohibited by New York Commission, EL PASO HERALD, Feb. 6, 1913, at 8; *Mixed Bouts Prohibited*, WASH. EVENING STAR, Feb. 7, 1913, at 15; *No More Mixed Bouts*, ATLANTA GEORGIAN, Feb. 6, 1913, at 7; *Commission Cuts List of Referees*, BUFFALO COURIER, Feb. 6, 1913, at 10.

105. Lester A. Walton, *Mixed Bouts*, N.Y. AGE, Feb. 17, 1916, at 5 (quoting New York Sun columnist Joe Vila). See also *Langford Waiting to Challenge Jess*, OMAHA DAILY BEE, Feb. 27, 1916, at 39.

106. Minnesota State Athletic Commission, *Rules and Regulations for the Government of Boxing in the State of Minnesota* (1919); Wisconsin State Athletic Commission, *Report of State Athletic Commission* (1914). See also *No Mixed Bouts in Milwaukee*, ROCHESTER DEMOCRAT AND CHRON., Mar. 5, 1914, at 17.

107. *New Boxing Regulations*, PERTH AMBOY EVENING NEWS, Apr. 30, 1918, at 11 (This rule was quickly abrogated although the commission in New Jersey initially discouraged the holding of mixed matches).

108. *Billy Gibson Here with Hay Fever*, N.Y. TRIBUNE, Jan. 6, 1915, at 8; *Mixed Bouts Not Allowed in Wis.*, FARGO FORUM AND DAILY REPUBLICAN, Jan. 6, 1915, at 6.

109. *Smith and Langford to Box*, BALT. SUN, Sept. 20, 1913.

110. *Langford Signs to Meet Gunboat Smith*, N.Y. SUN, Sept. 7, 1913, at 6.

This was a much-ballyhooed fight with a large potential audience, and the Athletic Commission refused to alter its rules.¹¹¹ Again, it appeared that the public sided with the Commission.¹¹² Yet, the route by which the Commission adhered to its rule was circuitous.

The Commission's chairman met with New York State Attorney General Thomas Carmody about the propriety of its rule.¹¹³ The Attorney General informally advised the commissioner that a rule based solely on racial discrimination, would not be valid.¹¹⁴ The Attorney-General informed him that the Commission could not discriminate against colored boxers.¹¹⁵ The Chairman was told ". . . that the Commission hadn't a leg to stand on."¹¹⁶ This was generally interpreted as meaning that the fight could legally be staged.¹¹⁷

Attorney General Thomas Carmody, however, soon clarified and significantly modified his advice in a formal opinion.¹¹⁸ He found indirectly that "the commission has the power to forbid mixed fights."¹¹⁹ One newspaper stated, "A second opinion . . . reversed in part his original opinion and upheld the commission in the decision prohibiting mixed bouts."¹²⁰ The commission could not arbitrarily ban mixed bouts, but its enabling "statute gives power to the commission to adopt such rules as will prevent disorder, brutality, and offenses against

111. *Commission Maintains Position on Color Line*, LOUISVILLE COURIER J., Sept. 11, 1913; *No Smith-Langford Fight*, WASH. POST, Sept. 11, 1913).

112. R. Edgren, *Weight of Public Sentiment With Boxing Commissioners for Refusing to Withdraw its Rule Against "Mixed Bouts,"* N.Y. EVENING WORLD, Sept. 25, 1913, at 14.

113. "Color Line Illegal, Say Fight Promoters", TORONTO GLOBE, Sep. 19, 1913.

114. *Mixed Bouts Up Again*, N.Y. TRIB., Sept. 19, 1913, at 19.

115. John Pollock, *Carmody's Ruling Paves Way For Lanford-Smith*, N.Y. EVENING WORLD, Sept. 19, 1913, at 19. *Smith and Langford to Fight*, BALTIMORE SUN, September 20, 1913, at 10; *Mixed Bout Rule Illegal*, N.Y. SUN, Sept. 19, 1913.

116. *Langford-Smith Bout On*, N.Y. SUN, Sept. 20, 1913, at 12.

117. *Id.*; *Gunboat Smith to Box Sam Langford*, N. Y. TIMES, Sept. 22, 1913, at 7; *Negro and White Man Have Right to Box in State of New York*, CINCINNATI ENQUIRER, Sept. 20, 1913, at 7.

118. *Opinions of the Attorney-General*, 1913 NY Att'y Gen. Rep. & Op. 587 (1913).

119. *The Attorney-General's Opinion as to the Mixed Bout*, N.Y. SUN, Sept. 26, 1913.

120. *Another Ruling On 'Mixed' Boxing Bouts*, N.Y. TRIB., Sept. 25, 1913, at 21. The Tribune in a sub headline also noted, "Attorney General Renders an Opinion Which Partly Reverses One of a Few Days Ago."

public decency and safeguard and advance the art of boxing.”¹²¹ Accordingly, “The State Athletic Commission, to avoid disturbances of the peace, may prohibit a sparring exhibition between a white person and a colored person, but it should not arbitrarily discriminate against all such bouts by reason of the color of the contestants.”¹²²

Armed with this significantly modified, near about-face opinion, the Athletic Commission unanimously blocked the Langford-Smith fight.¹²³ The commission based its decision on the opinion of the Attorney General that it could prevent fights which might prompt disorder where the decision was made for the good of the sport.¹²⁴ Attorney General Carmody later stated that his opinion found that the Athletic Commission had “no [power] to make a rule prohibiting the meeting of white and colored boxers unless such meeting leads to disorder.”¹²⁵ As a practical matter, since the Athletic Commission believed that all mixed bouts could lead to disorder or disturbances of the peace, the rule against mixed bouts continued in effect.

This time, there was some public dissatisfaction with the Athletic Commission’s decision. Sam Langford’s manager threatened to bring suit saying this was a clear case of discrimination.¹²⁶ The sheriff of New York County, Julius Harburger, denounced the notion of banning mixed race fights. He stated, “Citizenship has been set aside and a rule adopted which will not hold in any court of justice in this State.”¹²⁷ Supporting Harburger’s views on the ban was the famous Western lawman Bat Masterson who had become a sports columnist. Masterson wrote, “The Negro is entitled to the same rights under the law as the white man, and it isn’t within the province of any man or set of men to make a rule that deprives him of his rights.”¹²⁸

121. Attorney General’s Opinion, *supra* note 118, at 588; *Rule Against “Mixed Bouts” Was Never Aimed at Jack Johnson, Says Frank O’Neil Of Original Boxing Commission*, N.Y. EVENING WORLD, Jan. 19, 1916, at 12.

122. Attorney General’s Opinion, *supra* note 118, at 587.

123. *Sustains Ruling in Mixed Boxing*, N.Y. TIMES, Sept. 25, 1913, at 11.

124. *Smith and Langford Cannot Scrap Here*, N.Y. SUN, Sept. 25, 1913; *Sustains Ruling in Mixed Boxing*, N.Y. TIMES, Sept. 25, 1913, at 11.

125. *Against the Color Line*, BROOKLYN DAILY STAR, Nov. 25, 1913, at 5.

126. *Threatens to Sue Athletic Commission*, BINGHAMTON PRESS AND LEADER, Sept. 30, 1913.

127. *Sheriff Julius Is in Favor of Mixed Bouts*, BROOKLYN DAILY STANDARD UNION, Sept. 12, 1913, at 12; *see also Harburger Unhappy Over Color Line*, BROOKLYN DAILY EAGLE, Sept. 12, 1913, at 20.

128. *About Boxing Commission*, N.Y. AGE, Sept. 18, 1913, at 6; *see* ROBERT K. DE ARMENT, *GUNFIGHTER IN GOTHAM* 136 (2013).

One clear effect of the mixed bout ban was that black fighters were thoroughly discouraged. They could not fight whites and were left to face the same black fighters all the time. They either had to quit boxing or face the same fighters. That happened to an almost absurd degree as African American fighter Sam Langford fought Harry Wills 17 times, Sam McVea 15 times, Joe Jeannette 14 times, and Battling Jim Johnson 11 times.¹²⁹

VI. MIXED BOUTS APPROVED

After the failure of the Langford-Smith fight, several years passed with the ban on mixed bouts remaining in full effect.

The ban was strengthened by the 1914 decision of State Supreme Court Justice Seabury in *Fitzsimmons v. New York State Athletic Commission*.¹³⁰ In that case, the Athletic Commission denied 51-year-old former champion Bob Fitzsimmons permission to participate in a boxing match.¹³¹ Fitzsimmons argued that this was a denial of his right to earn a living at a lawful calling without due process and that the Commission's decision impaired his contractual rights.¹³² Justice Seabury quickly disposed of Fitzsimmons's arguments basing his decision on the broad authority that the Frawley Act granted to the Athletic Commission. He wrote, "Under this act the Commission has general authority over all boxing and sparring matches and exhibitions. To it is committed 'the sole direction, management and control of and jurisdiction over' such contests."¹³³ Had Fitzsimmons been successful in his challenge, the validity of the rules of the Athletic Commission would have been severely tested. The victory of the Athletic Commission in the Fitzsimmons case was seen as vindicating its rule on mixed bouts. If the Commission had the sole direction over boxing, then its rule on mixed bouts would also be given deference.¹³⁴

129. Mike Lockley, *Don't Treat These Fighters Lightly*, SUNDAY MERCURY (Birmingham, Eng.), July 5, 2015.

130. *Fitzsimmons v. N.Y. State Ath. Comm'n.*, 1914 N.Y. Misc. LEXIS 1293 (N.Y. Sup. Ct. Jan. 27, 1914), *aff'd*, 162 A.D. 904 (N.Y. App. Div. 1914) (Justice Seabury later became a member of the New York Court of Appeals, a Democratic party candidate for governor, and the main investigator into New York City municipal corruption in the early 1930's).

131. *Id.* at 1.

132. *Id.*

133. *Id.* at 10.

134. *See Case of Fitzsimmons Test*, CHI. TRIB., Jan. 15, 1914, at 14.

The ban continued even though the perceived potential menace that Jack Johnson might fight for the heavyweight championship in New York was long since over. Johnson had lost his championship to white heavyweight Jess Willard in April of 1915.¹³⁵ After this defeat, Johnson ceased to be a serious factor in the heavyweight ranks.

The opportunity to reverse the ban on mixed bouts was revived in 1916. The Athletic Commission had been reorganized and had a new chairman in Frederick Wenck.¹³⁶ There was also a different governor in Charles Whitman who had been elected in 1914.¹³⁷

Chairman Wenck went about trying to end the ban on mixed bouts. He went to the State Attorney General's office, and "Deputy Attorney General Obermaier has notified the triumvirate that this rule is unconstitutional."¹³⁸ It was largely assumed that the mixed bout prohibition would be ended in the winter of 1916.¹³⁹

That did not happen. Despite the belief that the mixed bout ban would be ended, the two side commissioners voted against chairman Wenck's proposal.¹⁴⁰ The mixed bout ban still had its adherents. The Washington Herald questioned Wenck's attitude. It wrote:

The game surely has thrived since mixed bouts were banned. Of course it seems like a curtailment of the rights of colored fighters, but they brought upon the odium upon themselves and they are suffering therefor. They are permitted to battle among themselves, and then again there is no clamor for mixed bouts. Mixed bouts always create racial hatred, so why not let well enough alone.¹⁴¹

135. *Willard Victory Recalled: On April 5, 1915, He Knocked Out Jack Johnson on Cuban Track*, L.A. TIMES, Apr. 6, 1995.

136. *Wenck Heads Boxing Commission*, N.Y. TRIB., Oct. 9, 1915.

137. *Charles Seymour Whitman 1868-1947*, 33 ABA J. 473 (1947).

138. *Four Bouts This Week Bear on Title Claims*, N.Y. SUN, Jan. 17, 1916, at 8; Hype Igoe, *Boxing Solons Change Washday*, N.Y. TRIB., Jan. 17, 1916, at 13; see also R. Edgren, *Lack of Mixed Bouts Hasn't Hurt Boxing*, N.Y. WORLD, Jan. 18, 1916 (There is no written record of any opinion of the Attorney General's office).

139. *Commission Will Allow Mixed Bouts*, N.Y. TIMES, Jan. 17, 1916.

140. *Blow to Mixed Bouts*, N.Y. TIMES, Feb. 18, 1916; *New Scale of Weights Adopted by Commission*, N.Y. TRIB., Feb. 21, 1916, at 12; *Few Radical Changes in New Boxing Rules*, N.Y. WORLD, Feb. 21, 1916, at 8.

141. *Boxing Commission Will Rule Game in New York*, WASH. HERALD, Mar. 27, 1916, at 10; R. Edgren, *Lack of Mixed Bouts Hasn't Hurt Boxing*, N.Y. WORLD, Jan. 18, 1916 (The influential sports columnist Robert Edgren at the New York World had written about the ban on mixed fights, "To tell the truth the sport

Four months after the Commission had continued the ban on mixed bouts, it changed its mind. Apparently acting under the recommendation of Governor Whitman, the State Athletic Commission unanimously rescinded its ban on mixed bouts in June of 1916.¹⁴² Shortly thereafter, the first mixed fight was held on July 7, 1916, when a black fighter named Leo Johnson, “the African Packy McFarland,” defeated a white fighter named Allie Nack.¹⁴³ There were no racial problems at the fight.¹⁴⁴ There were apparently few racial issues at the other mixed bouts held in New York in 1916-1917. Nonetheless, the Frawley Law had a limited lifespan. After a death in a match in Albany in January of 1917, the legislature, at the urging of Governor Whitman, repealed the Frawley Law.¹⁴⁵ For a three-year period from 1917-1920, boxing was again outlawed in New York State.

VII. MIXED BOUTS AFTER BOXING’S REAUTHORIZATION

A. *The Walker Law & Mixed Bouts*

After the Walker Law, which reauthorized boxing, was passed in 1920, there was continued uncertainty as to whether the new boxing commission would draw the color line. There was nothing in the legislation itself on the propriety of mixed bouts. There was speculation that in the absence of Jack Johnson’s presence in the fight game, the new commission would allow mixed fights.¹⁴⁶ Mixed bouts had not

has not suffered”); see also James J. Corbett, *Weinert Could Outpoint Moran in Ten Rounds Says James Corbett*, NEWARK EVENING STAR AND NEWARK ADVERT., Jan. 22, 1916, at 19 (“My idea is every race for itself. I believe in giving the negro freedom, but we do not mix with him [...] they do not allow a negro to play in a professional baseball league; then, why should he box with a white man?”).

142. John Pollock, *Fistic News and Gossip*, N.Y. WORLD, June 27, 1916; see also W. O. McGeehan, *Plan to Repeal Law Against Mixed Bouts*, N.Y. TRIB., June 27, 1916, at 13 (“It is intimated that Governor Whitman is certain that the rule forbidding mixed bouts is illegal”); and *Azevedo Stops Jackson in First of Mixed Bouts*, N.Y. WORLD, July 8, 1916, at 4 (“Governor Whitman ordered the ban on such matches removed”).

143. *Negro Boxer Wins Fight*, N.Y. TIMES, July 8, 1916; *Allie Nack Easy for Leo Johnson*, N.Y. TRIB., July 8, 1916.

144. George B. Underwood, *Black and White Boxers in Fights*, N.Y. SUN, July 8, 1916, at 13.

145. 1917 N.Y. Laws 1598.

146. See Joe Villa, *Fulton and Wills Groomed to Fight*, PHILA. INQUIRER, July 3, 1920 (The prior ban on mixed bouts was “as a result of the widespread unpopularity of Jack Johnson.” Before the commission had been appointed, the

created a significant issue when they had been reauthorized in New York 1916. They had not produced a significant controversy in New Jersey which filled some of the void in boxing that had occurred as a result of the repeal of the Frawley Law.

That did not come to pass. The new commission initially maintained an informal ban on mixed bouts. In Troy, New York, in October of 1920, a black fighter named Kid Black was denied permission to fight the white Tony Caponi.¹⁴⁷ The commission had ruled that under the Walker Law, there would be no mixed bouts in New York State.¹⁴⁸ The Commission cancelled the fight fifteen minutes before the fight program was to start.¹⁴⁹

For nearly two years after the Troy incident, the commission continued to hedge on the issue of mixed bouts. There was no formal ban on mixed bouts, but no mixed bouts were ever authorized.¹⁵⁰ Advocates of mixed bouts—including black elected officials—asked Governor Nathan Miller to approve of mixed bouts.¹⁵¹ Miller advised the advocates that he was aware of no ban on mixed bouts, and there was no color line in the State.¹⁵² Shortly after that, the Athletic

International Sporting Club even announced a heavyweight fight in New York between white boxer Fred Fulton and black fighter Harry Wills); *Make Plans for Boxing Opening*, N.Y. EVENING TELEGRAM, July 7, 1920, at 7 (They did fight in New Jersey where Wills knocked out Fulton in three rounds).

147. E.A. Mahar, *Many Criticize Action of Boxing Board at Troy*, ALBANY ARGUS, Oct. 27, 1920.

148. *Id.*; Dan Carroll, *Before and After*, ALBANY TIMES UNION, Oct. 26, 1920; Bat Wright, *Bouts Under New Law*, TROY TIMES, Oct. 26, 1920, at 14.

149. Mahar, *supra* note 151 (“There is nothing in the little blue book supposed to contain the Walker law in full, which states that mixed bouts are not to be allowed. Perhaps the importance of banning negro boxers from New York State rings, for it virtually amounts to that, is not fully understood.”).

150. It was called an “invisible ban.” See *Ban on Mixed Bouts in New York State Seems About Lifted*, DALLAS EXPRESS, Oct. 7, 1922, at 7. It was similarly termed an “unwritten rule.” *Wills Hurls Defi at Champ*, ITHACA JOURNAL-NEWS, June 14, 1922, at 8; See also *The Round-Up*, N.Y. TRIB., Aug. 28, 1922, at 11. “[W]hile the Boxing Commission may openly approve of mixed bouts its members have reached tacit understanding with promoters that none is to be put on in this state... [t]he fact remains that colored fighters can get no bouts with white fighters in this state.”

151. Nathan Miller was the New York State governor from 1921-1922. His administration was sandwiched inside the four terms of Governor Alfred Smith who served from 1919-1920 and 1923-1928.

152. George B. Underwood, *Negro Fans Seek Aid of Governor*, N.Y. EVENING TELEGRAM, Aug. 25, 1922, at 6. See also George B. Underwood, *National Boxing Body Is Needed*, N.Y. EVENING TELEGRAM, June 21, 1922, at 9. “Through reliable

Commission actually ended the ban on mixed fights, and the first mixed bout under the Walker Law finally took place two years after the law went into effect when Danny Edwards fought Irish Johnny Curtin on September 26, 1922.¹⁵³ Four years later, in New York, an African American middleweight named Tiger Flowers fought for and won the championship over the reigning white champion Harry Greb.

B. The Saga of Harry Wills

The 1922 authorization did not end the single major controversy over mixed fights in New York. From the beginning of Jack Dempsey's reign as heavyweight champion in 1919 until its conclusion in 1926, there were continuous questions raised over why he failed to fight the outstanding African American heavyweight Harry "The Brown Panther" Wills. "Wills became the cause celebre of boxing in the 1920s."¹⁵⁴ There is uncertainty in the historical record over who in Dempsey's camp was responsible for the multiple decisions to duck Wills. Was it Dempsey himself, his manager Doc Kearns, and/or his promoter Tex Rickard?¹⁵⁵ Was it the Athletic Commission which would state that Dempsey had to fight Wills but then would not follow up on its directive and strip away Dempsey's championship status or his license?¹⁵⁶

There were also a series of allegations that Governor Al Smith of New York helped to make sure that Dempsey would not fight Wills in

sources, we learn that unless ordered by Governor Miller to do otherwise, the New York State Athletic Commission will not lift the ban on mixed bouts."

153. *Negro Boxers*, N.Y. AGE, Oct. 29, 1949, at 66.

154. RANDY ROBERTS, *JACK DEMPSEY: THE MANASSA MAULER* 214 (2003).

155. Dempsey biographer Roger Kahn believes that the failure of Dempsey to fight Wills was due almost entirely to promoter Tex Rickard. "Rickard told Dempsey, as he had been telling him for years, that he would never put a Negro in the ring to fight for the heavyweight championship." ROGER KAHN, *A FLAME OF PURE FIRE* 384 (1998).

156. Commissioner Muldoon "forced Dempsey into a position where his manager, Jack Kearns, was compelled to sign for a match with Wills. Then on top of this, shortly after, Muldoon issued certain edicts that were tantamount to banning the match." EDWARD VAN EVERY, *MULDOON THE SOLID MAN OF SPORT* 340 (1929); See James P. Sinnott, *In Mid-Channel*, *MORNING TELEGRAPH* (N.Y.), Feb. 4, 1923, at 9; By contrast, four decades later, the Athletic Commission took quick action to suspend the license of heavyweight champion Muhammed Ali. The Commission suspended Ali's license as soon as he refused to be inducted into the armed forces, well in advance of his conviction for refusing induction. See *Muhammad Ali v. Div. of State Athletic Comm'n*, 308 F. Supp. 11, 13 (S.D.N.Y. 1969).

New York either because Smith did not want to harm his presidential chances in the South,¹⁵⁷ or because he wanted to prevent race riots.¹⁵⁸ Smith was, in fact, so concerned about the black vote that in 1923, he ended his campaign to elect Democrats in the State legislature in the largely black enclave of Harlem, saying that he had no power over the proposed Dempsey-Wills fight because he did not control the members of the Athletic Commission.¹⁵⁹ No matter the protestations, the International Boxing Hall of Fame on its website for Harry Wills says of the potential Dempsey-Wills fight, “The Governor of the State of New York canceled the contest fearing that race riots would follow the fight.”¹⁶⁰

The controversy over Wills’s eligibility to fight for the championship only ended after Wills’s loss to future white heavyweight champion Jack Sharkey in 1926. By that time, Wills was thirty-seven years old and had been fighting professionally for over fifteen years. While Wills was disqualified for a foul in the thirteenth round,

157. Rome L Dougherty, *Gov. Kills Wills Bout*, N.Y. AMSTERDAM NEWS, Aug. 22, 1923, at 1; *Gov. Smith Denies Barring Wills Bout*, N.Y. TIMES, Aug. 19, 1923; See also Frank Getty, *Rickard Outmaneuvers Commish in Signing Dempsey*, ATLANTA CONST., Apr. 22, 1926, at 8; “There are many who think that Governor Al Smith’s chances of obtaining the Democratic presidential nomination in 1928 would not be improved as far as the solid south is concerned by a mixed bout at this time.”

158. A BOXING LEGACY: THE LIFE AND WORKS OF WRITER AND CARTOONIST TED CARROLL 109 (Ian Phimister & David Patrick eds., 2023); BERT RANDOLPH SUGAR, BERT SUGAR ON BOXING 270 (2003); Boxing commission chairman William Muldoon once claimed that he, and not Governor Smith, had prevented the Wills-Dempsey fight. *Muldoon Says He and Not Governor Smith Placed Ban on Dempsey-Wills Bout*, N.Y. TELEGRAM AND EVENING MAIL, Feb. 9, 1924, at 12; Muldoon not only was a former champion wrestler, but he was also the trainer of John L. Sullivan. On the other hand, Commissioner Muldoon’s biographer intimated that Muldoon’s actions preventing the fight were “on orders from a very high place.” Edward Van Every, *supra* note 158 at 340.

159. *Smith Discusses Beer, Boxing, Rent in Harlem*, N.Y. TRIB., Nov. 6, 1923, at 2 (“The Governor protested that he had no part in the decision of the Boxing Commission prohibiting the fight between Harry Wills, the negro and Jack Dempsey, the heavy-weight champion of the world. No sooner than the Governor mentioned this incident than the entire crowd began to murmur.”); *Smith Makes Last Plea for Assembly*, N.Y. TIMES, Nov. 6, 1923, at 3.

160. Harry Wills, INTERNATIONAL BOXING HALL OF FAME, <http://www.ibhof.com/pages/about/inductees/oldtimer/wills.html> (last visited Oct. 22, 2023).

Sharkey had beaten Wills thoroughly throughout the fight.¹⁶¹ Adding to the racial undertones of the fight, Sharkey announced before the fight to a national radio audience “I’m going to lick hell out of this n-word.”¹⁶² When it became apparent that Wills was going to lose, the crowd at Ebbets Field began singing, “Bye, Bye Blackbird.”¹⁶³ But with Wills no longer a viable contender for the heavyweight crown, the legal issues in New York over mixed bouts were largely ended.

VIII. THE COLOR BAR IN OTHER JURISDICTIONS

What happened in New York State did not stay in New York State. A series of other states and Great Britain dealt with the same mixed bout issue as New York. In some of these jurisdictions, unlike New York, the issues persisted for many decades, even until the second half of the twentieth century.

In Nebraska, a color line existed until 1923.¹⁶⁴ It only ended after the governor determined that the color line was unconstitutional and dismissed the state’s boxing commissioner.¹⁶⁵

In 1922, when there was a proposal to authorize a fight between Jack Dempsey and Harry Wills to fight at Fenway Park in Boston, the Massachusetts Boxing Commission issued an official statement that it would not tolerate the fight.¹⁶⁶ Chairman Charles Buckley stated that such a fight would harm boxing in the state. “The attitude of the commissioners from the start has been not to allow such bouts, . . . and I know that the commissioners have not changed from that stand.”¹⁶⁷

161. Grantland Rice, *Sharkey Gives Wills Terrific Beating*, N. Y. HERALD TRIB., Oct. 13, 1926, at 30.

162. Robert Edgren, In *Sharkey’s Corner Optimism Reigns; He Thinks Maloney is Easy – How Solomon Beat Jimmy*, YONKERS STATESMEN, May 19, 1927, at 15 (Most newspapers sanitized the quote to exclude the n-word).

163. Damon Runyon, *Beaten All the Way, Wills Loses on Foul in 13th*, BUFFALO COURIER EXPRESS, Oct. 13, 1926, at 21.

164. *Lum Doyle Dismissed by Bryan Who Erases Color Line in Boxing*, OMAHA MORNING BEE, June 16, 1923, at 10.

165. *Id.*

166. W.J. MacBeth, *Fight Site Not Purse Is Main Dempsey-Wills Match Concern*, N.Y. TRIB., March 7, 1922.

167. *Big Bout Could Not Be Staged in Mass.*, BERKSHIRE EAGLE, March 6, 1922.

In the city of Indianapolis, where boxing was under local control, the city boxing commission, starting in 1922, barred mixed fights.¹⁶⁸ This policy continued at least through 1926.¹⁶⁹

In 1925, the Kansas Athletic Commission not only barred mixed fights, but it also barred blacks from serving as seconds for white fighters.¹⁷⁰

After a race riot in the 1929 fight between white welterweight Jackie Fields and black welterweight Jack Thompson, the Illinois Athletic Commission banned mixed matches.¹⁷¹ That ban only lasted for about six months. It was rescinded in order to permit a subsequent title fight in Chicago between Fields and Thompson.¹⁷²

Wisconsin finally allowed mixed bouts in 1930, after an absence of nearly two decades.¹⁷³ Mixed bouts were still not permitted in Delaware as of 1940.¹⁷⁴

Into the late 1940's, the District of Columbia Amateur Athletic Union (AAU) did not authorize mixed fights.¹⁷⁵ Accordingly, the

168. A.D. Williams, *Indianapolis Commission Now Bars Mixed Matches*, CHI. DEFENDER, Aug. 12, 1922, at 10.

169. *Against Mixed Bouts*, INDIANAPOLIS TIMES, Nov. 21, 1928, at 15.

170. *Kansas Commission Bars Mixed Fights*, AFRO. AMERICAN (Balt.), Aug. 1, 1925.

171. *Probes Are Begun in Chicago Panic*, WASH. EVENING STAR, Mar. 27, 1929, at 44; James P. Dawson, *One Dies as a Result of Rioting at Bout*, N. Y. TIMES, Mar. 27, 1929.

172. *Fields Agrees to Defend Ring Title*, PITTSBURGH POST-GAZETTE, Dec. 13, 1929, at 20. That subsequent fight was not held in Illinois. Fields and Thompson ended up fighting in for the championship in Detroit in 1930. Thompson defeated Fields. In their previous two fights, Fields had defeated Thompson.

173. *Milwaukee Holds Mixed Bout After 20 Years*, WASH. TIMES, Apr. 11, 1930, at 38. See also *Legalizing Transportation of Prize-Fight Films: Hearing on S. 2047 Before A Subcomm. of the Comm. of Interstate Com.*, 76th Cong. 54 (1939) (statement of Fred J. Saddy, Secretary of the State Athletic Comm'n of Wis.) ("I suppose that the present law was created some time ago when we had a colored champion whose conduct was very unbecoming so far as the white women were concerned, and it did create a lot of hatred between the whites and the blacks, pertaining to fights. But that is some time ago.")

174. *Round the Ring*, WILMINGTON J., Feb. 8, 1940, at 22.

175. *AAU Condone DC Athletic Color Bar*, CLEVELAND CALL & POST, Dec 14, 1946, at 8B.

Golden Gloves tournament occurred without white and black fighters facing each other.¹⁷⁶ The ban was only lifted in 1947.¹⁷⁷

Additionally, during this controversy, in 1946, Congressman Frederick Van Ness Bradley from Michigan introduced legislation banning mixed bouts in the District of Columbia.¹⁷⁸ That legislation did not get out of committee.

Florida banned mixed matches,¹⁷⁹ and the ban was not lifted until 1952 when black welterweight champion Kid Gavilan fought a white contender in Miami.¹⁸⁰ Seating at boxing matches in Florida remained segregated until 1961 when heavyweight champion Floyd Paterson demanded integrated seating for his fight against challenger Ingemar Johansson.¹⁸¹

Finally, Governor Lester Maddox of Georgia in 1970 tried to prevent Muhammad Ali from fighting the white heavyweight Jerry Quarry in Atlanta.¹⁸² Unable to prevent the fight, Maddox declared the day of the fight to be a “day of mourning.”¹⁸³

The history of the mixed boxing bans in Great Britain, Pennsylvania, Texas, and Louisiana cannot be summed up in a series of short paragraphs. Each jurisdiction had a long history with mixed bouts, and each requires a more detailed and nuanced explanation.

176. *Id.* The ban was in effect even though professional mixed matches had been held in the District of Columbia starting in 1940.

177. *Mixed Amateur Fight is Booked for Friday*, WASH. EVENING STAR, Oct. 21, 1947, at A19.

178. H.R. 6019, 79th Cong. (1946).

179. *Jim-Crow Florida to Bar Chocolate Fight*, AFRO-AMERICAN (Balt.), Jan. 11, 1930, at 14.

180. *Kid Gavilan Outpoints Dykes, Keeps Title in Florida Fight*, N.Y. HERALD TRIB., Feb. 5, 1952, at 25; John A. Diaz, *Gavilan Ready to Defend Welterweight Crown in Miami*, PITTSBURGH COURIER, Feb. 2, 1952, at 15.

181. Jesse Abramson, *\$10,000 to Floyd Bars Jim Crow at Title Bout*, N.Y. HERALD TRIB., Jan. 20, 1961, at 20.

182. *Gov. Maddox Is Trying to Stop Ali-Quarry Bout*, NEWSDAY (Melville, N.Y.), Sept. 26, 1970, at 23.

183. Stan Isaacs, *Maddox' Axe Is His Proclamation*, NEWSDAY (Melville, N.Y.), Oct. 22, 1970, at 49; Tom Linthicum, *Maddox Declares Day of Mourning*, ATLANTA CONST., Oct. 23, 1970, at 63.

A. The Color Bar in Great Britain

After Jack Johnson left the United States, he moved to Europe in an effort to find boxing opportunities.¹⁸⁴ When Jack Johnson attempted to fight the white British champion boxer Bombardier Billy Wells in London in 1911, the fight was called off.¹⁸⁵ Even though Great Britain had a tradition of allowing mixed bouts, there was increasing racial tensions throughout much of the British Empire. Even the king was supposedly opposed to the fight because a mixed match “would do harm,” and word of the king’s opposition was conveyed to the Home Secretary Winston Churchill.¹⁸⁶ Numerous protests against the proposed fight occurred in Great Britain. Clergymen throughout the country started to oppose the fight. The fight was called off by Home Secretary Winston Churchill. “The decision to intervene was made by Winston Churchill, now Home Secretary. Johnson was charged with a planned breach of the peace and the fight cancelled.”¹⁸⁷ Churchill’s “Home Office declared the match illegal, as a breach of the peace and counter to the best interests of the nation and empire.”¹⁸⁸

The Home Office’s bar of the Johnson fight had major repercussions for boxing in Britain. “It was Johnson’s ill-fortune to transform a thin colour line into a colour bar that has become as wide as a continent.”¹⁸⁹ In 1922, the Home Secretary banned a fight between black heavyweight fighter Battling Siki and Joe Beckett, the British heavyweight champion. Again, the reasoning was the same offered for canceling the Johnson-Wells fight. “The meeting of black and white

184. Sam C. Austin, *Johnson Goes to Europe Wants to Cinch His Claim to Title-To Fight All Comers*, NAT’L POLICE GAZETTE, May 27, 1911, at 10.

185. See *The Fight*, S. WALES GAZETTE AND NEWPORT NEWS (Gwent, Wales), Sept. 29, 1911, at 3.

186. *King Edward Stopped Johnson-Wells Contest*, NEW J. & GUIDE (Norfolk, Va.), May 28, 1938, at 18.

187. Kasia Boddy, *Below the Belt*, FIN. TIMES (London), June 23, 2007 (Weekend Magazine), at 22.

188. Theresa Runstedtler, *White Anglo-Saxon Hopes and Black Americans’ Atlantic Dreams*, 21 J. WORLD HIST. 657, 683 (2010). The Home Secretary’s official decision stated, “The Home Secretary, after full inquiry, and having taken the best advice, has arrived at the conclusion that what is contemplated is illegal, and unless the promoters voluntarily abandon the contest steps will at once be taken to prevent any such illegality from taking place.” *Johnson-Wells Fight*, MANCHESTER GUARDIAN (Eng.), Sept. 26, 1911.

189. TREVOR C. WIGNALL, *STORY OF BOXING* 258 (1923) (Wignall and numerous other commentators of the era believed that Johnson’s behavior—his lifestyle and outspokenness—were the cause of the white discrimination towards black fighters and blacks in general).

combatants was likely to arouse passions which it is most important to avoid, especially in view of the fact that coloured men are numerous in some parts of the British Empire.”¹⁹⁰ No black fighter was permitted to fight in Britain in a championship fight until Dick Turpin in 1948.¹⁹¹ In that year, the British Board of Boxing Control finally ended its requirement that British champions must have two white parents.¹⁹²

B. The Color Bar in Pennsylvania

When boxing in Pennsylvania was under the control of local municipal authorities, the city of Philadelphia, under the purview of its Director of Public Safety, had taken the position that mixed bouts were illegal.¹⁹³ Even after Pennsylvania replaced the system of local control with a statewide system under an athletic commission, the new Pennsylvania Athletic Commission continued the Philadelphia policy and barred mixed fights in Philadelphia and throughout the commonwealth.¹⁹⁴

190. *Colour-Fight Barred*, MANCHESTER GUARDIAN, Nov. 10, 1922; *Beckett-Siki Fight Banned*, TIMES OF LONDON, Nov. 10, 1922 (“The authorities intend using all their powers to stop this fight . . . because they consider that a fight between a white man and a negro is not in the interests of the Empire.”) *See also*, *A Wise Decision*, TIMES OF LONDON, Nov. 10, 1911, at 11 (“To allow them to take place on English Soil would in these days be an act of suicidal folly, and the action of the Home Office in this particular case, will meet, we are convinced, with warm approval from the general public.”)

191. Jim Weeks, *Breaking the Barrier: How Dick Turpin Became Britain’s First Black Boxing Champion*, VICE (June 23, 2016, 10:15 AM), <https://www.vice.com/en/article/bmqm8d/breaking-the-barrier-how-dick-turpin-became-britains-first-black-boxing-champion>.

192. Martin Johnes & Matthew Taylor, *Boxing, Race, and British Identity, 1945–1962*, 63 *Hist. J.* 1349 (Dec. 2020). The mixed bout prohibition continued in Britain’s former colony, South Africa, which continued its ban on mixed bouts until 1976. Ron Jackson, *Looking Back: Race Distinction in Boxing During the 70’s*, SUPERSPORT (Jan. 20, 2022, 11:14 AM) <https://supersport.com/boxing/general/news/0d3df7f4-65cd-4f17-8829-296e0730a1ca/looking-back-race-distinction-in-boxing-during-the-70s>.

193. *Mixed Bouts Prohibited by Director Cortelyou*, N.Y. TELEGRAM, Dec. 21, 1921.

194. *Mixed Bouts Barred in Philadelphia*, ALLENTOWN MORNING CALL, Dec. 11, 1923, at 22; *The Old Sport’s Musings*, PHILA. INQUIRER, Dec. 17, 1923, at 22; *Pennsylvania Boxing Body Puts Ban on Mixed Bouts*, N.Y. TIMES, Dec. 11, 1923, at 25.

That policy was challenged by a black member of the Pennsylvania Athletic Commission.¹⁹⁵ Charles Fred White believed that the Commission's actions in barring mixed fights were unconstitutional. The Athletic Commission then requested an opinion from Pennsylvania Attorney General Woodruff.¹⁹⁶

Woodruff initially requested the Commission to suspend its rule, and he quickly issued an advisory opinion finding that barring mixed bouts was illegal.¹⁹⁷ Woodruff found that, "[i]t is contrary to Article XIV of the Constitution of the United States for the Pennsylvania Athletic Commission to attempt to enforce a general regulation prohibiting mixed bouts, namely bouts or sparring exhibitions in which the opposing contestants are one white and the other colored."¹⁹⁸

Besides the 14th Amendment violation, Woodruff determined that the rule also impaired contractual obligations without due process.¹⁹⁹ He recommended "that you should rescind absolutely, if you have not done so already, your rule against 'mixed bouts' and if you desire, substitute for it a general rule to prevent disorder, riot, brutality and the like."²⁰⁰ With that opinion, mixed bouts were authorized in Pennsylvania.

Even after mixed fights had been permitted, in 1926, Charles Fred White, the sole black member of the Pennsylvania Athletic Commission, was removed from his position by the governor after refusing to authorize the Dempsey-Tunney heavyweight championship fight.²⁰¹ White had advocated that heavyweight champion Jack Dempsey needed to fight Harry Wills before he could fight Gene Tunney for the championship. For his opposition, he was let go from the Athletic Commission.²⁰²

195. *Fight Body Suspends Law Prohibiting Mixed Bouts*, PITTSBURGH COURIER, Dec. 22, 1923, at 7.

196. *Id.*; *Mixed Bouts Divide Pennsylvania Board*, N.Y. TIMES, Dec. 12, 1923, at 27.

197. George W. Woodruff, *In Re: Mixed Boxing Bouts*, 10 DEP'T REPS. OF PA. 59, 60 (1924).

198. *Id.*

199. *Id.*

200. *Id.* at 61.

201. *Governor Pinchot "Fires" Charles Fred White*, PITTSBURGH COURIER, Aug. 28, 1926, at 1.

202. *Id.*; *Negro Removed from Penn Athletic Board*, BOS. GLOBE, Aug. 25, 1926, at 10.

C. The Color Bar in Texas

Texas authorized professional boxing in 1933.²⁰³ As part of its authorization, the law contained a provision stating that no individual or entity should “knowingly permit any fistic combat match, boxing, sparring or wrestling contest or exhibition between any person of the Caucasian or ‘White’ race and one of the African or ‘Negro’ race.”²⁰⁴

That provision was unchallenged for two decades. The challenge came from an unlikely source. The challenge came from the largely unknown I. H. “Sporty” Harvey. Harvey was a twenty-seven-year-old black truck driver and boxer. His fight record was not imposing. He had five wins in twenty-one fights.²⁰⁵ Harvey hired as his attorney Maury Maverick, an outspoken liberal state representative. Maverick had unsuccessfully introduced legislation in 1953 to challenge the ban on mixed fights.²⁰⁶ Maverick brought his action in state court against the State Labor Commissioner, whose office had jurisdiction over boxing.

At the trial court level, the constitutionality of Texas statute was upheld.²⁰⁷ Yet, after the initial decision, *Brown v. Board of Education*, banning separate but equal school education, was decided by the Supreme Court.²⁰⁸ On the appeal of Harvey’s case, the appellate court determined that there was common knowledge that mixed fights did not cause public disturbances or riots.²⁰⁹ Seeing little reason for the classification of white and black fighters and citing the *Brown* decision, the court overturned the statute as a violation of the 14th Amendment.²¹⁰ The state of Texas appealed the decision to the Texas Supreme Court, which refused a writ of error.²¹¹

Based on the decision, Sporty Harvey then fought against white Texas heavyweight and major top prospect, Buddy Turman.²¹² Harvey

203. See *History of Texas Combative Sports Statutes*, TEX. DEP’T LICENSING & REG., <https://www.tdlr.texas.gov/sports/history.htm> (last visited Jan. 23, 2024.)

204. Tex. Penal Code arts. 614-11(f). Acts of June 13, 1933, 43rd Leg., ch. 241, § 11, p.843.

205. Francine Sanders Romero, “*There Are Only White Champions*”: *The Rise and Demise of Segregated Boxing in Texas*, 108 THE SW. HIST. Q. 26, 37 (2004).

206. Cary Clack, *The Bout*, (Feb. 19, 2020), <https://medium.com/truly-adventurous/the-bout-2f3aff03a3be>.

207. *Harvey v. Morgan*, 272 S.W.2d 621, 622-23 (Tex. Ct. App. 1954).

208. *Brown v. Bd. of Educ.*, 347 U.S. 883 (1954).

209. *Harvey*, 272 S.W.2d at 625.

210. *Id.* at 627.

211. *Id.* at 621.

212. Clack, *supra* note 206.

was overwhelmingly outclassed on paper. He was knocked down three times and lost the fight.²¹³ Nevertheless, he surprisingly lasted throughout the ten-round fight.²¹⁴ There were no race riots in the stands, and it was considered a success story for everyone.²¹⁵ The end of the ban on mixed bouts in Texas caused no significant problems.

D. The Color Bar in Louisiana

Louisiana had a long history of boxing and was one of the centers of the sport in America in the late 18th century. The mixed fight between black champion George Dixon and Jack Skelly in 1892 was part of a major carnival of boxing. The fight—easily won by Dixon—put an end to mixed bouts in that city for “half a century.”²¹⁶ In 1915, the mayor of New Orleans pledged to jail the fighters and the promoters of any mixed fight.²¹⁷

By 1955, the same year that Sporty Harvey was able to fight a white man in Texas, there was still no mixed boxing in Louisiana.²¹⁸ Yet, the fact was that there was nothing in the law or rules in Louisiana which banned mixed matches. An attempt was made to promote a match between white fighter Willie Pastrano and black fighter Willie Troy.²¹⁹ By a 3-2 vote, the Louisiana Athletic Commission turned it down.²²⁰ Later in the year, the Athletic Commission turned down a fight between former white lightweight champion Paddy DeMarco and black fighter Joe Brown.²²¹

Brown sued the Commission in state court alleging a violation of his constitutional rights.²²² The ruling of the Athletic Commission was upheld by the trial court.²²³

In 1956, the state of Louisiana tried to fortify its position against mixed fights. The Athletic Commission promulgated a rule stating, “[t]here shall be no fistic combat match, boxing, sparring, or wrestling

213. *Id.*

214. *Id.*

215. *Id.*

216. Winders, *supra* note 49 at 6.

217. *Mayor Puts Foot on Mixed Bouts*, N.Y. TRIB., Jan. 23, 1916, at 21.

218. Joseph T. Taylor, *Desegregation in Louisiana—One Year After*, 24 J. NEGRO EDUC., 258, 260 (1955).

219. *Mixed Bouts Get Vetoed*, ATLANTA CONST., June 7, 1955, at 9.

220. *See id.*

221. *Mixed Bouts Barred Again*, WASH. POST, Aug. 10, 1955.

222. *Court Upholds Mixed Race Ban*, N.Y. DAILY NEWS, Aug. 19, 1955.

223. *See Ban on Mixed Bouts Upheld in Louisiana*, PHILA. INQUIRER, August 19, 1955.

contest or exhibition between any person of the Caucasian or ‘white’ race and one of the African or ‘Negro’ race.”²²⁴

Additionally, the State legislature passed a bill banning interracial athletic contests.²²⁵ The social segregation law stated:

All persons, firms and corporations are prohibited from sponsoring, arranging, participating in, or permitting on premises under their control any dancing, social functions, entertainments, athletic training, games, sports or contests and other such activities involving personal and social contacts, in which the participants or contestants are members of the white and negro races.²²⁶

The law and the rule provided significant difficulty for highly rated lightweight fighter Ralph Dupas. Dupas, from New Orleans, who had always been treated as white.²²⁷ The State Health Department had alleged that Dupas was, in part, black and accordingly ineligible to fight whites under the State’s 1956 mandatory sports segregation law.²²⁸ After a two-day hearing, the Commission decide not to rule on the issue and allowed Dupas to fight as a white boxer.²²⁹

That was not the end of Dupas’ problems. After allowing Dupas to fight against a white fighter in one fight, the Commission required that Dupas produce a birth certificate if he wanted to continue to fight white boxers. When the birth certificate indicated that Dupas was black, the Commission evaded the issue and determined that it would await a final court determination, before it would change its initial decision that Dupas was white.²³⁰

224. See *Dorsey v. State Athletic Comm’n*, 168 F. Supp 149, 150 (E.D. La., 1958); *aff’d* 359 U.S. 533 (1959).

225. *Sports Segregation Gains in Louisiana*, N.Y. TIMES, July 6, 1956.

226. 1956 La. Acts, No. 579, § 1.

227. Dupas was prevented from fighting black lightweight champion Joe Brown because Dupas was considered white. See *Jolting Joe Brown Stops Ralph Dupas in 8th Round of Title Bout in Houston*, LOUISVILLE COURIER J., May 18, 1958; *Brown Predicts Knockout In Title Bout With Dupas*, PHILA. TRIB., May 6, 1958.

228. *La. Commission OK’s Ralph Dupas*, CHI. DEFENDER, Aug. 4, 1957.

229. *Louisiana Gives Dupas Okay Sign*, AUSTIN STATESMAN, April 3, 1957, at 24.

230. *Commission Gives Dupas the Go Sign*, CHI. DEFENDER, April 3, 1958, at 24; See generally *State ex rel Dupas v. City of New Orleans*, 102 So. 2d 77 (La. Ct. App. 1958), *aff’d*, 240 La. 820 (1960). Coincidentally, a similar issue had arisen a decade before in the case of New Orleans fighter Bernard Docusen. He was accused of being black and had to get a court order finding that he was half

Meanwhile, black heavyweight fighter Joseph Dorsey sued the Athletic Commission in federal court claiming that the Commission rule as well as the sports segregation law were unconstitutional.²³¹ A three-judge federal court agreed with Dorsey.²³² The racially based classifications were clear violations of the Equal Protection Clause. The host of procedural objections raised to the lawsuit by the State of Louisiana were also dismissed by the court.²³³ The State appealed to the Supreme Court, and the Supreme Court affirmed the judgment in a per curiam decision.²³⁴

Yet even the Supreme Court decision did not bring mixed bouts to Louisiana. It was not until 1965 that the Athletic Commission approved a mixed fight in Louisiana.²³⁵ African American former light welterweight champion Eddie Perkins defeated Kenny Lane in New Orleans on October 25, 1965.²³⁶ With the Perkins-Lane fight, the ban on mixed bouts came to its conclusion. Nearly three quarters of a century after George Dixon defeated Jack Skelly, interracial boxing returned to Louisiana.

CONCLUSION

The journalist and writer Damon Runyan may have summed up the era of the banned mixed bouts best. He wrote:

There never was any good reason for this prohibition. It had no basis of logic or justice. It was merely an echo of disfavor supposed to have been brought upon black boxers generally by Jack Johnson when he was heavyweight champion of the world. It was mainly a lot of "bunk."²³⁷

Filipino and half white. See Nakia Hogan, *Local Boxer 'Big Duke' Docusen Dies at 81*, NEW ORLEANS TIMES PICAYUNE, Jan. 14, 2009, at D-4.

231. CHI. DEFENDER, *supra* note 228.

232. Dorsey v. State Athletic Comm'n, 168 F. Supp. 149, 152-153 (E.D. La. 1958), *aff'd*, 359 U.S. 533 (1959).

233. *Id.* See also *Court Voids Louisiana Ban on Racially Mixed Sports*, N.Y. TIMES, Nov. 29, 1958, at 21.

234. State Athletic Comm'n v. Dorsey, 359 U.S. 533, 533 (1959) (per curiam), *reh'g denied*, 79 S. Ct. 1446 (1959).

235. *Louisiana Okays Interracial Bout*, HARTFORD COURANT, Oct. 6, 1965, at 22.

236. *Lane Says He's 'Through' After Being Battered*, SHREVEPORT J., Oct. 26, 1965, at 10. See also *Lane Through After Bad Beating*, L.A. TIMES, Oct. 27, 1965.

237. Damon Runyan, *A Tale of Two Fists*, PITTSBURGH PRESS, June 1, 1919, at 24.

It was more than a lot of bunk. It largely destroyed the careers of a large number of top black boxers, and it discouraged a whole generation of blacks from participating in boxing.²³⁸ It hurt the quality of boxing and stained the quality of American life for decades by making a mockery of equal justice and opportunity not just in New York State but throughout the nation. The color line drawn by the Athletic Commission established a State-backed system of separate but unequal sports regulation. Nobody can look at the action of the New York State Athletic Commission in 1913 in banning mixed bouts as anything other than cruel and evil. Utilizing the masquerade of protecting public decency and order, the State Athletic Commission engaged in bald-faced prejudice and race hatred.

238. *Id.*