

2018

New Takes on Jim Crow: A Review of Recent Scholarship

Anders Walker

Saint Louis University School of Law

Follow this and additional works at: <https://scholarship.law.slu.edu/faculty>



Part of the [Civil Rights and Discrimination Commons](#)

Recommended Citation

Walker, Anders. New Takes on Jim Crow: A Review of Recent Scholarship. *Law and History Review* (February 2018), Vol. 36, No. 1.

This Article is brought to you for free and open access by Scholarship Commons. It has been accepted for inclusion in All Faculty Scholarship by an authorized administrator of Scholarship Commons. For more information, please contact erika.cohn@slu.edu, ingah.daviscrawford@slu.edu.

New Takes on Jim Crow: A Review of Recent Scholarship

Nicholas Guyatt, *Bind Us Apart: How Enlightened Americans Invented Racial Segregation*, New York: Basic Books, 2016. Pp. xii, 403. \$29.99 cloth (ISBN 978-0-4650-1841-3).

Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity*, Chapel Hill: University of North Carolina Press, 2016. Pp. xv, 337. \$34.95 cloth (ISBN 978-1-4696-2759-5).

Robert Cassanello, *To Render Invisible: Jim Crow and Public Life in New South Jacksonville*, Gainesville: University Press of Florida, 2013. Pp. xv, 188. \$18.95 paper (ISBN 978-0-8130-6219-8).

James W. Endersby and William T. Horner, *Lloyd Gaines and the Fight to End Segregation*, Columbia: University of Missouri Press, 2016. Pp. xii, 379. \$36.95 cloth (ISBN 978-0-8262-2085-1).

Stephen A. Berrey, *The Jim Crow Routine: Everyday Performances of Race, Civil Rights, and Segregation in Mississippi*, Chapel Hill: University of North Carolina Press, 2015. Pp. xiii, 331. \$29.95 paper (ISBN 978-1-4696-2093-0).

Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America*, New York: Liveright, 2017. Pp. xvii, 345. \$27.95 cloth (ISBN 978-1-63149-285-3).

More than half a century has passed since C. Vann Woodward penned his iconic monograph, *The Strange Career of Jim Crow*, and legal segregation continues to compel. Recent works have reassessed Jim Crow's birth, its life, and its aftermath, suggesting that the system was at once more implicated in the reproduction of racist ideas than had been previously assumed, and also more fluid: a variegated landscape of rules and norms that lent themselves to various forms of political, legal, and cultural resistance.

For example, Nicholas Guyatt's *Bind Us Apart: How Enlightened Americans Invented Racial Segregation* challenges Woodward's thesis that segregation was born after Reconstruction, arguing that the intellectual foundations were set during the antebellum period. As Guyatt tells it, fear that abolition might lead to interracial sex, or "amalgamation," prompted abolitionists themselves to argue for separating the races, in part by

recolonizing freed slaves to Africa (115–32). Such arguments were accepted by prominent figures such as Abraham Lincoln and less prominent Southerners as well, many of whom feared that a free black population could not live in harmony with free whites, prompting them to contemplate colonization, a move that resulted in the establishment of Liberia on Africa's west coast.

Guyatt's story is familiar in some regards (most will recognize the colonization debate), new in others (some will be surprised that Northerners fueled talk of separating the races), but his terms are off. What Guyatt calls "segregation" is not the system that emerged in the 1880s and 1890s, per Woodward, but is rather another mode of dividing the races that a cadre of historians in the 1970s and 80s called "exclusion"; that is, separating the races by sending freed slaves to Africa, a point made by historians Howard Rabinowitz and John Cell.¹ Both argued that racial segregation did not involve removing blacks to some distant shore, but rather involved developing an elaborate network of rules that would allow African Americans to remain in the South and work, keeping the Southern economy racking along. In many ways, the system of segregation that emerged in the South did not separate the races at all, but rather facilitated their interaction, a point raised by Stephen A. Berrey in his recent book *The Jim Crow Routine: Everyday Performances of Race, Civil Rights, and Segregation in Mississippi*. Moving away from Woodward's emphasis on racial extremism and violence, Berrey tells a fascinating tale of the day-to-day banality of Jim Crow, including the performative aspect of Southern segregation. Rather than a rigid system of apartheid, argues Berrey, Jim Crow allowed for a remarkable degree of interracial contact, relied on relatively flimsy dividers to keep the races apart, and generally served as a system of deference rather than physical separation. It is true that such deference was enforced by the specter of vigilante violence, but for most Southerners life was relatively dull, governed less by lynch mobs than by a humiliating code of conduct, an oppressive set of manners, and a repressive "routine" (2).

More horrific was life for those sentenced to Southern prisons, a topic that Sarah Haley takes up in *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity*. Haley's book builds on Glenda Gilmore's *Gender & Jim Crow: Women and the Politics of White Supremacy in North Carolina*, which maintained that Woodward was

1. Howard N. Rabinowitz, "From Exclusion to Segregation: Southern Race Relations, 1865–1890," *Journal of American History* 63 (Sep. 1976), 325–350; John W. Cell, *The Highest Stage of White Supremacy: The Origins of Segregation in South Africa and the American South* (Cambridge, UK: Cambridge University Press, 1982), 179–180.

right and that whites enlisted violence and terror to institute segregation, in part by stoking fears of black-on-white rape that drew heavily from gendered stereotypes of black men as savage, white men as civilized, and white women as paragons of virtue who needed to be protected from black assaults. Resolute midst this violence, argues Gilmore, were middle class black women who responded to segregation and disfranchisement by forging their own organizations, building their own networks, and mounting their own progressive reforms from within the confines of Jim Crow.

Haley takes up Gilmore's analysis, but leads it in new directions, focusing not on black clubwomen but black female prisoners. Such prisoners, argues Haley, were more salient to the construction of racial segregation than clubwomen, because they provided whites with examples of "juridical inverts: perverse, primitive, pathological, and therefore not entitled to protection or freedom" (6). Haley's account fills in a critical piece of the Jim Crow puzzle, demonstrating how African American women who challenged the law were dismissed as criminals, whereas women who remained "subservient" to the law were held up as an "ideal" (35). Gilmore's black progressives, in Haley's telling, were eclipsed by two archetypes that came to dominate the white imagination: the violent deviant and the loyal servant, both of whom lent credence to the white argument that Jim Crow was a mutually acceptable arrangement that fostered interracial harmony. To those familiar with Southern literature, this story should resonate. William Faulkner's portrayal of Dilsey in *The Sound and the Fury*, Margaret Mitchell's portrayal of Mammy in *Gone with the Wind*, and Harper Lee's depiction of Calpurnia in *To Kill a Mockingbird* all demonstrate the manner in which Southern whites clung to the idea of black women as pillars of Southern society, provided that they accepted its racial norms. Black women who challenged those norms, however, were derided and dismissed.

But they did not yield. According to Haley, African American women prisoners engaged in various forms of sabotage, including "running away," "refusing orders," "violating rules," "feigning obsequy," and even producing art—tactics that were similar to those employed by African Americans under slavery—but that were also new (202, 206). In her final chapter, for example, Haley discusses the composition of music—specifically the blues—as a form of "sonic sabotage" that incarcerated women engaged in to counter "the general harm of captivity as well as the horrific conditions of southern punishment" (221). Citing well-known artists such as Bessie Smith and Gertrude "Ma" Rainey; as well as "unnamed collectives of women imprisoned at Mississippi's Parchman Penitentiary," Haley recasts the Southern prison as a locus of black resistance, a space where female prisoners could "destabilize" the persuasive

power of “legal authority,” undermine the “binary of innocence/guilt,” and contextualize their actions “with poignant revelations about their experiences and conditions” (223).

Haley’s discussion of prison resistance underscores Jim Crow’s role not only in imposing racial caste, but also in creating racial space, a theme that lies at the center of Robert Cassanello’s study *To Render Invisible: Jim Crow and Public Life in New South Jacksonville*. Noting that even as whites relied on Jim Crow to dominate the “public sphere,” so too did segregation create a “black counterpublic,” or zone where African Americans could “meet in private to foster a consensus about the state of race relations, explore the meaning of black citizenship, and develop strategies to combat white supremacy” (5). To illustrate, Cassanello describes how African Americans rallied to defend Benjamin Reed, a black brewery worker who accidentally killed a white coworker in 1892, by arming themselves, patrolling the streets, and posting sentinels around the Jacksonville jail where Reed was held to prevent the formation of a white mob. This black “countermob” explains Cassanello, was “too organized and orderly to be spontaneous,” and likely was the product of “local black fraternal organizations providing the covert network to organize the action” (64).

Cassanello’s tale of black resistance, forged in black space, resonates with Haley and Gilmore’s stories about gender, respectability, and crime. For example, Cassanello shows how black train travelers struggled against white stereotypes, often purchasing first class tickets only to find themselves relegated to cheaper “smoking” cars. Before railcars were formally segregated, in other words, railroad companies offered two types of tickets, first or second class, most first class tickets going to whites and most second class tickets going to Africa-America, simply as a product of disparities in wealth. However, problems tended to emerge when affluent blacks purchased first class tickets. This was the case, for example, of Alice Williams, a black woman who boarded a first class car in Jacksonville in 1886, only to be forcibly removed to the smoking car by an angry conductor (88). Although Williams believed that “her respectability afforded her a degree of privilege on the railroad,” her complaints were ignored and she was “dragged face down by her legs to the ‘smoking car,’” a fate that did not befall the black nannies or servants on the train who “embodied the symbols of subservience” that whites had come to expect (88). Williams’s story corroborates Haley’s argument that black women were expected to fit two molds: either loyal servants who bolstered the status quo or criminals who undermined it, a nod to the gendered construction of race in the Jim Crow South.

Even as middle and upper class blacks defied stereotypes, so too did they pioneer reform, a point that Gilmore makes and that Cassanello

substantiates in his story about Florida, showing how African Americans who were denied first class tickets on railroads lobbied for equal accommodations—essentially their own first class cars—and won. “A committee of black leaders from Jacksonville sent word to the governor approving of the legislation so long as the railroads and government enforced equal with the same vigor that they enforced separate” (90). Passed in 1887, Florida’s equal accommodations rule resonated with other such rules enacted across the South, one of which became the target of a legal challenge in the Supreme Court’s landmark *Plessy v. Ferguson* decision in 1895. Although generally dismissed as a racist opinion, *Plessy’s* requirement that separate accommodations be made equal actually coincided with black reform efforts in Florida, a startling point that Cassanello underscores.

African Americans did not content themselves with simply pushing for equal accommodations, a reality that James Endersby and William Horner demonstrate in their recent book *Lloyd Gaines and the Fight to End Segregation*. Taking up an oft-overlooked case, *Missouri ex rel. Gaines v. Canada*, Endersby and Horner tell the story of how the National Association for the Advancement of Colored People (NAACP) joined with local counsel in St. Louis to pressure University of Missouri registrar Cy Woodson Canada into admitting Lloyd Gaines into the state’s flagship law school. Prior to Gaines’s application, Missouri had paid black graduate students to leave the state, a policy that Gaines and other founds objectionable. Building on arguments such as those made by African Americans in Florida, Gaines and his attorneys argued that if equal accommodations could not be provided in state, then Missouri had to integrate, a point that won Supreme Court approval in 1938 (45).

According to Endersby and Horner, one of America’s biggest black counterpublics—to borrow from Cassanello—emerged in St. Louis, a destination city for African Americans seeking to escape harsher conditions farther South during and after World War I. “Though St. Louis and the state practiced racial segregation,” note Endersby and Horner, “economic opportunities for southern refugees were good, at least compared to conditions in the Deep South” (13). Gaines—born in Mississippi—was one such migrant, as were his attorneys, Sidney Revels Redmond, who also hailed from Mississippi, and Henry Espy, a native of Florida. St. Louis’s diverse black elite contributed to the emergence of an active black legal community and also an active black press—the St. Louis *American* having been founded by African American lawyer and Yale graduate Nathan B. (Ben) Young in 1928—both key to the *Gaines* case, and both headquartered in the Peoples Finance Building, “a hub for the black political elite” near downtown (20) (see [Figure 1](#)).



Figure 1. Peoples Finance Building, 11 N. Jefferson, St. Louis, MO. Source: Western Historical Manuscripts Collection.

As the imposing presence of the Peoples Finance Building suggests, black activism in St. Louis began long before Gaines sued to enter law school. Local attorneys won an injunction against a residential segregation ordinance in 1916, the local branch of the NAACP (also headquartered in the building) provided legal services to victims of a vicious race riot in East St. Louis in 1917, and black voters succeeded in electing Walthall M. Moore, the state's first black legislator, into the state House of Representatives in 1920, a victory that would have been hard to imagine in the Deep South at the time (22). Moore went on to sponsor the Lincoln University Act of 1921, a successful measure that established the “first, and only, public or state-directed institution of higher education specifically for advanced learning of African Americans” in the United States: Lincoln University (22).

Recapturing the black activism, and hope, that illuminated St. Louis in the 1920s and 30s helps to explain how local actors played important roles in what would become national stories—the *Gaines* victory, for example, as well as *Shelley v. Kraemer* 10 years later—even as it provides important context for understanding variations in Jim Crow across the South. Missouri was not Mississippi, argue Endersby and Horner convincingly, a distinction that helps us understand how the Gaines case came into being, who argued it, and why Gaines left Mississippi for Missouri in the first place.

Evidence that the non-Southern locales moved toward exclusion—that is, prison—long before the South emerges in Richard Rothstein's recent book *The Color of Law: A Forgotten History of How Our Government*

Segregated America. Rothstein uncovers elaborate, often startling efforts by government agencies, both state and federal, to exclude African Americans from owning and even renting homes in ostensibly progressive places such as the San Francisco Bay Area in the 1930s and 1940s. In Palo Alto, for example, African Americans seeking to buy or rent found themselves condemned by government mortgage policies to a single neighborhood, East Palo Alto, and then consigned to a public school built in the center of the neighborhood in 1958, “creating a segregated African American school in the eastern section and a white one to the west” (13).

The end result of such discriminatory policies, which included federal requirements that blacks be housed separately from whites as early as the 1930s, was the creation of exclusively black neighborhoods, or ghettos, which were then aggressively policed (6, 8, 19). Rothstein goes on to expand his California story, showing how the Federal Housing Authority (FHA), refused to approve residential projects that were open to blacks, a prohibition that continued through the 1960s and would lead to the exclusion of African Americans from white neighborhoods across the country.

Rothstein’s findings are as sobering as they are compelling, expanding earlier work by urban/suburban historians such as Tom Sugrue, Kenneth T. Jackson, and Kevin Kruse, to include America writ large; suggesting that as Jim Crow was dismantled in the 1960s, so too did the South become more like the North, more impersonal, less subject to a daily “routine,” more reliant on faceless prisons and uniformed police. Rothstein, more than Berrey and Haley, helps explain the urban landscape that gave rise to Michelle Alexander’s *New Jim Crow*, even demonstrating how federal housing policy led to more rigid segregation in Southern cities such as Atlanta, Georgia and Austin, Texas. “African Americans became more removed from mainstream society than ever,” observes Rothstein, “packed into high-rise ghettos where community life was impossible, where access to jobs and social services was more difficult, and where supervision of adolescents and even a semblance of community policing was impractical” (32). Although this was not true for all African Americans, Rothstein provides an important corrective to the widely held assumption that segregation in the North and West was the result of private rather than public ordering, an important distinction in the Supreme Court’s rulings of the period.

As impassioned debates about the Southern past explode in contemporary politics, the works here offer new observations, fresh perspectives, and useful insights into the strange, painful, and much-too-long career of Jim Crow.

Anders Walker
Saint Louis University