

BY HANDS NOW KNOWN



JIM CROW'S LEGAL EXECUTIONERS

"Shocking, moving, and thought-provoking. . . . One of those rare books that forces us to consider in new ways the nature of our politics and society and the enduring legacy of our troubled past." —Eric Foner, *New York Review of Books*

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INTRODUCTION

"The Black Man Is a Person Who Must Ride 'Jim Crow' in Georgia"

—W. E. B. DuBois

In June 1944, a person named Sam Rayburn sent a letter to the New York office of the National Association for the Advancement of Colored People about a death in Donalsonville, Georgia. An "elderly Negro woman" had been examining a can of oil at a general store. The white man in charge told her to put the can down. She did so, then turned, perhaps on her heels, and left. The man, whose age Rayburn put at about twenty, followed her from the store onto the street and beat her with an ax handle, causing her death. Rayburn, the letter writer, did not name the victim or the perpetrator, but did say it was rumored that the white man had been arrested and promptly released. "Donalsonville," the letter continued, "is a small town completely isolated . . . Please intercede if there is any possible chance." A lawyer for the NAACP, likely overworked, advised Rayburn to look to local authorities or Georgia's governor, Eugene Talmadge, for an investigation.

Rayburn's letter was all that kept this incident from disappearing into thin air. It never made it into any newspaper or historical account.

Remaining a mystery is the name of the killer, although the extant legal records allow us to say with some confidence that he was never prosecuted. We know nothing—not the race nor the gender—of Sam Rayburn. In 2020, researchers learned that the victim was one Ollie Hunter, that she was in her midsixties, and that she was likely single when she was killed. If there was any legal process in Donalsonville, it appears not to have been preserved. The case never reached federal authorities.

Scanty though the facts are, they suggest how lethal, for women and for men, the most commonplace encounters under Jim Crow could be. And they tell us something about the role of law, for they suggest that the dispute mechanisms that are at the heart of the country's sense of exceptionalism—reliance on neutral laws and evidence-based determinations—yielded to a strikingly different system under Jim Crow. What cultural norm did Ollie Hunter violate? Did she curse the store manager? Throw the can onto the counter? Exit the store too quickly? Was there bad blood between the two? Who was the killer? Did he raise his family in Donalsonville after the murder? Did his descendants remain there? Who were the local journalists who deemed the case too trivial to report? The prosecutor who, so far as we can tell, let the case die? We are left to speculate on details and motives, but what we do know about the slaying tells us a great deal about the role of direct, physical violence in sustaining Jim Crow. Based on these facts, at that time and place, the transgressor was the Black "elderly" woman, not the young white grocer, and her sentence was death.

Although much has been written about the South in general and southern Jim Crow in particular, the system of white supremacy that prevailed between the late nineteenth and mid-twentieth century is ancient history for the current generation. They may recognize the names Rosa Parks and Fred Shuttlesworth, and know something about lynching, but they likely have little sense of the quotidian violence that shaped routine experiences like grocery shopping and tied the nation's legal institutions to its racial culture. Much of that history was never preserved. The chronic, unpredictable violence that loomed

over everyday Black life, dictating the movements and postures of white storeowners and Black customers, is what sustained Jim Crow for over half a century. Conflating private and public authority, and immunizing whites who served as its unofficial policemen—like the grocer—Jim Crow blurred the lines between formal law and informal enforcement. C. Vann Woodward captured this in his 1955 classic, *The Strange Career of Jim Crow*: “the Jim Crow laws put the authority of the state or city in the voice of the street car conductor, the railway brakeman, the bus driver . . . the hoodlum of the public parks and playgrounds.”

Although closely correlated with life in the postbellum South, Jim Crow took different forms across the country, embedded in culture, articulated in law, and entrenched in politics. Often portrayed as defining a strictly dualistic system with segregation on the one hand and integration on the other, Jim Crow was as pervasive in northern spaces where no signs demarcated racial positioning as it was in southern spaces where the races rubbed elbows but occupied different worlds. It was not so much tied to a geographical place as it was a national project, supported not just by the violence of “the locals” but by a national legal system that endorsed and sustained a missionary commitment to a future of perpetual white rule.

While researchers have examined the history of the Jim Crow regime and its contemporary footprint, particularly in the realm of criminal justice, the erasure of important parts of this narrative—Ollie Hunter’s case and those like it—leaves us with crucial gaps in our understanding of the period. Using newspaper accounts, courtroom testimony, legislation, and judicial rulings, *By Hands Now Known* addresses those gaps. It seeks to illuminate how direct physical violence, a defining feature of Jim Crow, shaped the legal terrain in the South during the first half of the twentieth century—transforming, in fundamental ways, concepts of federalism, citizenship, and democratic rights and privileges. Neither sporadic nor irrational, but rather inescapable and uncontrolled, the violence was a marker of legal personhood and freedom. Its ideologies and constructions—of racialized masculinity, of Black pain, suffering,

and silence, of color-coded public spaces, of southern redemption—have endured into the present. As a uniquely American phenomenon, the mob violence that riddled the southern landscape from Appomattox until World War II indubitably epitomized racial vulnerability. But the national obsession with lynching has also obscured the mundane, largely hidden violence that, while it lay at a different point on the spectrum, was equally essential to Jim Crow. Twice erased is the murder of Ollie Hunter: submerged, seamlessly, into the landscape of southern life at the moment of her death, and then omitted, brutally, from historical accounts of the period.

THE EARLY TO MID-TWENTIETH CENTURY was a critical period in solidifying white supremacy and incorporating its premises into legal codes and practices. This study of the Jim Crow legal system examines the experiences ordinary citizens had with police, prosecutors, and courts. It draws on cases, some well known and many, like that of Ollie Hunter, newly discovered, that have been collected by researchers at Northeastern University and the Massachusetts Institute of Technology under my direction and that of MIT political scientist Melissa Nobles, my research partner. In 2007, Nobles and I set out on a journey to unearth this forgotten history of racially motivated homicides, for the families, of course, but we also wore our scholars' hats as we did the work. Without these accounts, we thought, we could not fully map the Jim Crow system in the United States, or grasp how it seeped deep into the interstices of the US legal system, or the precise content of its residue today. Without them we could not measure the scope and nature of authoritarianism in the southern states, or the patterns and dynamics of Black resistance.

We knew that these histories had been largely ignored in official accounts of the period. But as we traveled across the country and visited with families, we met with hundreds of people who insisted on keeping these memories alive for their own posterity. Preserving ph-

tographs and old newspaper clippings, they cultivated a kind of vernacular history that they were eager to share with us. Despite these individual efforts, however, a careful account of lethal state violence remained unavailable to a wider public. It was our sense that as long as these events translated as idiosyncratic, one-off, private experiences of grief, multifaceted systems of racial injustice would remain hidden, and, concomitantly, the need for structural remedies would seem unwarranted. We brought together our professional expertise and the critical work that community historians were doing to compose a more comprehensive and accurate picture.

To track these cases we created a database of racial violence incidents—namely, homicides—in the US South during the Jim Crow era. We narrowed our scope to the South—fully mindful of the myth of southern exceptionalism—simply because so much of the violence occurred there. We chose the mid-twentieth century because we wanted to capture the memories of elderly family members, and because we had access to federal records from that period. A good deal had already been written about the racial violence of the traditional civil rights era. Jim Crow-era violence, on the other hand, had not been fully treated when we began our research. When we called survivors from the period, often they responded, “I thought I’d never get this call.” The fruit of this project is the CRRJ Burnham-Nobles Digital Archive, a collection of public documents and interviews that capture, through over a thousand homicides, the grim history of anti-Black violence in the Jim Crow South.

Drawing, in part, on these archival materials, *By Hands Now Known* tackles the three interrelated themes of federalism, racial violence, and resistance.

The federal government, including the Justice Department, had the legal tools to protect citizens from the most egregious forms of Jim Crow violence and a political duty to do so, but distance and denial severely undermined its response. In the mid-twentieth century, federal courts, oblivious to the long-term stakes, rendered nearly toothless the Reconstruction-era statutes that specifically targeted racist terror.

The government failed to grasp that what they were dealing with was not just a criminal law problem but a civil and human rights problem. Its failure to take the necessary steps to punish the violence constituted a breach of law and duty, even where the crimes were committed by private individuals. What tools were available to Washington and why were they ineffective? What permanent scars to the legal system are attributable to these failures? And how did the Black freedom movement challenge this federal abandonment?

Second, *By Hands Now Known* probes the dynamic relationship between violence (physical violence in contrast to symbolic or structural violence), political power, and citizenship during the Jim Crow era. These assaults both signified and solidified white male domination, repressed Black political participation and economic competition, and unified whites across class lines. Violence mediated the transformation from slave property to citizenship in a free labor regime. White control, including violent suppression, was inherent in slavery, but after the Civil War, the country's ruling elites, in both the North and the South, were operating under a purportedly liberal democratic regime, and therefore had to adopt different methods to control and exploit free labor. Violence that was previously lawful became putatively illegal. Nevertheless, from Reconstruction until the end of Jim Crow, Black citizenship was profoundly shaped by the white terror that served to control Black labor and mollify the white working class. The right to live free of violence—to have the legal wherewithal to protect one's property and person—was at the heart of the liberal, law-bound, democratic project. Stripping Black people of that right knocked them back to noncitizens. *By Hands Now Known* investigates these Jim Crow years of dashed hopes to illuminate how, after slavery was over, a self-described democratic republic used terror to revive a form of sub-citizenship that would prevail for just short of a century. It illustrates how authoritarian southern political systems thrived within an ostensibly democratic national polity.

Third, *By Hands Now Known* excavates the history of collective resistance to racial terror in the Jim Crow era. Historians have writ-

ten much about the civil rights movement of the thirties and forties, and the continuities in antiracist social movements across the twentieth century. Nevertheless, the popular view persists that Black protest, particularly in the South, was not especially robust or consequential until the late 1950s. The case studies here suggest otherwise. In September 1933, four thousand people, aroused to a “fever pitch,” attended a “protest funeral” in Atlanta in the wake of the police shooting of forty-year-old Glover Davis, a blind man. With ninety police officers, some mounted, armed with machine guns and tear gas, encircling the church, the pastor forbade protest eulogies. In defiance, one minister intoned, “Lord, give us men who are not afraid to . . . denounce police brutality, and their slaying of Negroes, shooting them in the back while they flee arrest . . . give us an aroused church, both white and black . . . who despite mob violence . . . and even though the police force surround our churches . . . will stand upon the house tops and cry aloud.” In 1942, thirteen years before the Montgomery boycott, Black bus passengers in Mobile, Alabama, threatened a “Walk to Work, Walk to Church, Walk to Shop” campaign, forcing the town’s bus company to disarm their drivers after an operator shot and killed a soldier on his bus. And in 1948, more than 2,000 mine workers, Black and white, staged a wildcat strike in Edgewater, Alabama, to protest the police killing of a popular fifty-four-year-old Black union man.

Demonstrations such as these were but one form of Black protest. Civil lawsuits filed by survivors of racial homicides offer detailed accounts of the events, as do petitions to public officials and letter-writing campaigns. These materials, the source of many of the cases examined in this book, evince sophisticated conceptions of the relationship between structural harms and police brutality, while also revealing significant divisions over politics and strategies. Though some civic and church leaders looked for consensus and favored top-down, deliberative approaches, militants—including many in the faith community—pushed back. Rejecting the prevailing script of respectability and polite subordination, they worked from the ground up, centered the perspectives of those at the bottom, perceived it as absurd

to lobby for legal change in lawless spaces, and argued that only bold contestation—which could include counterviolence and sabotage—would bring about change. Also key was the Black press, without which many of these stories would have remained hidden. These big city newspapers—including the *Chicago Defender*, the *Pittsburgh Courier*, and the *Baltimore Afro-American*—transformed individual tragedies into collective experiences, nationalized Black politics, and ignited the Black imagination. In sum, these practices of protest altered legal meanings, challenged the state’s pretensions to equal justice, fostered collective agency and solidarity, and dislodged official truths in favor of indigenous knowledge. These anti-Jim Crow activists lost as often as they won, but their travails, which tell us much about life under Jim Crow, comprise an essential umbilical link to the movements of the 1950s, ’60s, and ’70s.

A NINETEENTH-CENTURY federal case, *United States v. Cruikshank*, foreshadowed what was at stake in the twentieth-century struggle over federalism and citizenship. The case concerned a massacre that took place in Colfax, Louisiana, on Easter Sunday 1873. When the guns fell silent in a confrontation over the results of an election pitting Republicans, Black and white, against white Democrats, many of whom were former Confederate soldiers and members of groups like the Ku Klux Klan, 3 white men and somewhere between 60 to 150 Black men were left dead, and the parish courthouse, the site of the siege, was virtually in ashes. Historian Eric Foner described this event in majority-Black Grant Parish as the “bloodiest single instance of racial carnage in the Reconstruction era.” It “taught many lessons,” he wrote, “including the lengths to which some opponents of Reconstruction would go to retain their accustomed authority.” Although 97 members of the white mob were indicted under federal law, only 9 were charged. Congress investigated the massacre and released a report describing it as a “deliberate, barbarous, cold-blooded murder” that was a “foul blot on the

page of history," but the appellate courts overturned all the ensuing convictions.

The most harmful opinion came not from the US Supreme Court, but from one of its justices, Joseph P. Bradley, who was sitting on the federal appeals court along with two other judges. Bradley construed the laws that the Reconstruction Congress adopted to curtail racist terror in a manner that made it clear the federal courts would view with hostility any congressional efforts to confer all the elements of citizenship on the formerly enslaved. He read narrowly the constitutional grant of power to Congress to pass such laws. He reduced congressional power to hold individuals liable for civil rights violations. He heightened the prosecutor's burden in these cases by demanding proof of intentional discrimination. And, in effect, he reinforced the widely held belief that Black people should not be permitted to bear arms, notwithstanding the Second Amendment. The long shadow cast over federal civil rights enforcement by Bradley's opinion, which was endorsed by the Supreme Court, has crippled civil rights enforcement to this day.

In Louisiana, the reaction to Bradley's opinion was swift and brutal. Night riders in Colfax slit the throat of a Black man named Frank Foster who was, disastrously, in the wrong place at the wrong time. A few days later, one of the defendants in the *Cruikshank* trial, seemingly emboldened by the Bradley decision, helped an armed group force five Republican officials to leave their posts. Mob terror against Republicans picked up across the South, escalating the full-throttled project of violent redemption.

THE *CRUIKSHANK* CASE was about more than abstract theories of federalism and the separate powers of Congress and the courts. The limits on the constitutional authority of Congress to control racist violence changed the balance of power in favor of state and local police, prosecutors, and courts, who could thereafter enforce white supremacy

without much fear of federal oversight. As the cases described in *By Hands Now Known* underscore, the violent enactment of Jim Crow's precepts aligned with the unfettered power exercised by local police—elected sheriffs and their deputies in the rural South, police chiefs and their officers in the cities and towns.

Slavery abides in all American institutions, but its formative and enduring presence in policing during Jim Crow was particularly palpable. Indeed, the unremitting lines between violent policing, slavery, and Jim Crow were pronounced well into the twenty-first century. It could be perceived in the violence that claimed the lives of Trayvon Martin, the teenager who in 2012 violated the "white space" rule; Sandra Bland, who in 2015 defied the "never talk back to a white cop" rule; and George Floyd, the tall Black man whose mere existence was so irksome to a white officer that he felt entitled to perform a public execution in 2020. Such violence, at once calculated and casual, reconstructed the culture of policing from one generation to the next, from slavery through Jim Crow and beyond.

Performance of power and degradation, of Black otherness—this alienation of Black humanity, illegalization of Black life—is just half of the story of the parallels between modern policing and slavery. Black communities have fought back, and that militant history—the other half of the story—establishes that protest against police violence has always been central to Black social movements. From 1865 to the present, Black people have identified "law enforcement officers" as perhaps their most potent existential threat. In the first year of the twentieth century, a race riot broke out in New York City's Tenderloin district. The police force encouraged a mob intent on a lynching. New York activists who gathered the testimony of eighty victims reported that "it was the night sticks of the police that sent a stream of bleeding colored men to the hospital." Led by T. Thomas Fortune, a prominent Black journalist of the day, New Yorkers formed the Citizens' Protective League to pursue prosecutions against the officers. The league was not successful and the officers went back to their beats. That was more than a century ago, long before three Black women coined the phrase Black Lives Matter.

Lawless police acting on behalf of the state has defined how Black people experienced American law for two centuries, and concomitantly, Black struggles for citizenship and meaningful democratic participation have always included radical demands for relief from such state violence. *By Hands Now Known* explores what prevented the federal government from stepping in to control police brutality at the local level: why the Justice Department refused to craft an effective campaign to abate the terror, and how the federal courts exacerbated the problem—as had Justice Bradley in the *Cruikshank* case in the previous century. It is this pattern of non-enforcement that looks over our shoulders today. When, in current times, the Department of Justice defers to state prosecutors and juries, and when the federal courts enfeeble civil rights remedies that might make victims whole, as they do by allowing police to escape civil liability by claiming immunity, they are calling up the old playbook. Hovering all around us, in our august federal courts as much as in our county courtrooms, is the law of Jim Crow and, as well, its antecedent, the law of slavery.

THE STORIES OF the victims of Jim Crow and the communities that came to their aid anchor this account of racial violence and the legal system that fostered it. Important not only for what they teach us about Jim Crow, these stories point to an ideological debate about the American future that transcends the criminal legal system. The chapters that follow, organized in loosely chronological fashion, pursue the book's central questions by identifying specific themes, such as Jim Crow transportation during World War II, and by shining a spotlight on specific geographical areas, like Birmingham and Southwest Mississippi.

The subject of Part 1 is rendition—the legal process by which states make demands upon other states for the return of their citizens so that they may be subjected to criminal proceedings in the home state. The rendition conventions that emerged in the Jim Crow years were foreshadowed by the legal battles associated with the Underground Rail-

road. Together with the anti-lynching campaigns of crusaders like Ida Wells-Barnett and Walter White, rendition cases in the 1920s, '30s, and early '40s created an opportunity for southern and northern authorities to advance differing concepts of Black citizenship, states' rights, and due process. These cases also knit together a national Black community as migrants from the South reached back to help loved ones and neighbors escape the legal systems of the southern states. The cases reveal how the legal practices of slavery were reprised in the successor Jim Crow regime, and offer a perspective on cross-state campaigns to liberate Black men and women who were charged in the South and to then settle them in the growing metropolis commonly known as the "Northern ghetto."

Part 2 canvasses World War II-era cases to relate the battles between Black soldiers seeking to maintain their dignity and status as they traveled through the South and Jim Crow's gatekeepers, whether bus drivers, police officers, or white fellow riders. Like the first part, the chapters in Part 2 interrogate ideas about mobility as a feature of citizenship. The Justice Department and the War Department faced the question of whether Black soldiers had to comply with local rules regarding segregated transportation. Instead of definitive national policies protecting the soldiers, the federal government prevaricated and, with some notable exceptions, left the terrain to local authorities who were actively hostile to Black people in military uniforms. This part highlights an innovative example of politics from below—Black women's creative defiance of Jim Crow transportation, which undercut the legitimacy of the system, emboldened other Black riders, and challenged presumptions of power.

Part 3 offers an account of the establishment, in 1939, of a unit to address civil rights in the Justice Department and the challenges the department faced as it sought to reach violations buried deep in the South. To better grasp the flux and flow between federal policies and those of the states concerning civil rights criminal cases, the part follows the docket of a leading prosecutor in the federal Middle District of Alabama, which includes the capital city of Montgomery, once home to one of the country's busiest slave markets. The prosecutor began his career appropriately

enough, pursuing a sheriff who visited his brutality on Blacks and whites alike, but his enthusiasm rather quickly waned as he confronted jury nullification. The part describes the suffering caused, in no small part, by this particular federal official's capitulation to local authorities, and the measures taken in Washington to address the problem.

Part 4 strips to the bone Supreme Court jurisprudence on racial violence to better appreciate the impact of the court's pronouncements on political relationships at the local level. In 1945, in the case *Screws v. United States*, the Supreme Court imposed a confusing "intent" requirement on the federal criminal civil rights statutes passed during Reconstruction that made it difficult to prove a racial homicide case. This part surveys how the *Screws* case sanctioned the Jim Crow legal system, the debates between civil rights lawyers and federal prosecutors over the meaning of *Screws*, and the impact of the case on victims on the one hand, and the nascent civil rights legal community on the other.

Part 5 features cases from the postwar era in the Birmingham region that illuminate the complex relationships that constituted the Black resistance movement. Black residents of Birmingham, one of the country's most violent cities, had no shield against police violence, but the town was also a hub of Black resistance. In Birmingham as in other large cities in the South, the NAACP and the local press collaborated to maintain a record of police homicides—in the tradition of Ida Wells-Barnett and Monroe Work—and hence this part features the work of Emory Jackson, organizer of the NAACP branch and editor of the *Birmingham World* newspaper. Active in the region as well was the Southern Negro Youth Congress, an organization of young leaders who came together to pursue the agenda put forth in 1937 by the National Negro Congress. The cases in this part suggest how police killings operated both to enforce Jim Crow and to convince whites of the need to maintain it. These killings mythified the "bad Negro" and united white opinion behind "law and order." The part explores the terms of the resistance: perceiving the police and the lynch mob as interchangeable, Black communities deemed law and legal institutions antithetical to their interests. Their opposition to each killing, and their

insistence on justice, held the potential to bring these structural harms into focus and to shift the meaning of power and law. As well, the cases are profoundly compelling examples of the impulse to resist. The defiance of those who lost their lives was perhaps the most formidable and telling acts of resistance.

In Part 6, the Southwest region of Mississippi provides a site to examine how Jim Crow erased the crime of kidnapping from the codebooks where the victims were Black. Kidnapping constitutes a crime against a person, yet until well into the 1960s law enforcement practices signify that it was not illegal to kidnap a Black person. Traditionally law has conferred immunities to deprive courts of the right to adjudicate certain kinds of legal violations. Individual immunities, for example, protect judges and prosecutors from suit even when they have violated the law. In failing to prosecute kidnappers, southern states were, in effect, immunizing their acts: conferring upon them a legal right to do a legal wrong. This part explores the experiences of Black Mississippians who were abducted by whites—both police and private parties—and beaten and often banished, with no legal consequences for the perpetrators. This refusal to appreciate the criminal nature of white on Black abductions represented a form of common law, constituting a Jim Crow “Black Code.”

By Hands Now Known concludes with a turn away from the Jim Crow decades to explore early twenty-first-century insights about how states should reckon with historical injustices such as those narrated in this work. Thus, Part 7 presents some concluding cases from a range of jurisdictions to probe one of the book’s central questions: how amends should be made in the present to address long-buried historical harms. It examines arguments for reparations, apologies, truth proceedings, and other mechanisms that could recover this history, offer a platform for communities to confront it, and redesign legal structures that are tainted by the legacies of Jim Crow.