

Jim Crow's Unwritten Code

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Date : January 16, 2017

Stephen A. Berrey, [The Jim Crow Routine: Everyday Performances of Race, Civil Rights, and Segregation in Mississippi](#) (2015).

In *The Jim Crow Routine*, historian Stephen Berrey brings fresh eyes to the intricate set of legal rules that maintained racial segregation in the American South. Building on works like Leon Litwack's *Trouble in Mind: Black Southerners in the Age of Jim Crow* and Neil R. McMillen's *Dark Journey: Black Mississippians in the Age of Jim Crow*, Berrey focuses not on the rise or demise of Jim Crow so much as the manner in which it disciplined daily life. For average folks, argues Berrey, Jim Crow turned the South into a stage where whites and blacks learned to negotiate one another's presence on the street, in stores, at the post office, and at work – according to elaborate, albeit unwritten, scripts.

Taking Mississippi as a point of focus, Berrey demonstrates that Jim Crow involved a complex set of scripted “exchange[s]” between whites and blacks that were at once “subtle and dynamic, intimate and volatile,” exchanges that in a sense formed a customary law of interaction independent of legislatures and courts. (P. 4.) Closely linked to this were strategies of resistance that African Americans developed to avoid white recriminations, as well as strategies that whites developed to enhance, or modernize, the legal challenges of racial control. Such modernizations exploded dramatically following the Supreme Court's decision in *Brown v. Board of Education* in 1954, as southern states moved quickly to erase overt racial classifications from their law, meanwhile imposing new, more subtle forms of surveillance rooted in the rubrics of maintaining the peace, protecting property, and preventing crime.

At least one startling observation emerges from Berrey's study. First, as much as southern law worked to achieve racial separation, whites and blacks in the Deep South interacted and existed in a near constant state of racial togetherness, working, playing, shopping, fishing, and even eating in close proximity to one another, often to the point that racial segregation was adhered to only in the flimsiest, most ad hoc fashion. For example, Berrey presents us with stories of whites and blacks attending the same functions divided only by a row of stools (P. 19), attending the same theaters separated only by a rope (P. 25), eating together in fishing boats separated only by a casually placed stick (P. 24), and sitting in the same rows in courthouses with only one extra space between them (P. 27). Such divisions, which hardly kept the races apart, were further compromised by outright concessions that allowed for black servants to join their employers on train cars and trolleys and even live in their homes.

As Berrey puts it, “even within a segregated system, African Americans and whites regularly interacted in public spaces such as bars and on buses and in the private spaces of the home.” (P. 22.) Precisely because such interactions were ubiquitous, argues Berrey, Jim Crow frequently manifested itself less as a legal system of physical separation than an implicit script of social performance, a customary law that required blacks not to avoid contact with whites, which was impossible, but rather to pay them deference. To take just a few examples, blacks were expected to remove their hats when meeting whites in the street, to make way for whites in line at the post office, and to refrain from calling whites by their first names. (P. 31.)

This is important. In his recent book *Bind Us Apart: How Enlightened Americans Invented Racial Segregation*, Nicholas Guyatt argues that the origins of Jim Crow lay in antebellum debates about

colonization, i.e., the idea that African Americans should be transported back to Africa upon emancipation, lest the races engage in “amalgamation.” Berrey suggests the opposite, namely that segregation had less to do with separating the races than keeping them together, a point that calls to mind the distinction between segregation and exclusion first articulated by historian Howard Rabinowitz. Rabinowitz maintained that colonization was a form of exclusion that needed to be distinguished from segregation, which actually allowed significant amounts of interracial contact.

Berrey takes Rabinowitz’s thesis in new directions, suggesting that segregation was really more about performances of deference than separation, and that the laws of Jim Crow were themselves designed to remind blacks not of their isolation from whites, but rather their subordination to them. Berrey locates the origins of segregation not in calls to exclude blacks from southern society, but rather in efforts to counter black demands for equality following the Civil War. Citing historian Leon Litwack, Berrey notes that post-bellum white southerners became concerned that emancipated blacks were “less-deferential” than their enslaved ancestors, even to the point of becoming “aggressive” about their right to be considered “social equals.” (P. 21.)

Closely related to this was a fear that newly emancipated blacks might try to blur racial boundaries, either by engaging in intimate relations with whites or passing (a practice by which light-skinned African Americans held themselves out as white). (P. 21.) Here, Berrey provides us with an alternate hypothesis to explain how southerners dealt with questions of amalgamation, or interracial sex. While Guyatt argues that the favored solution was colonization, Berrey suggests that it was segregation, a system that barred interracial liaisons and maintained racial “difference” precisely because it demanded racial deference. (P. 21.)

The second half of *The Jim Crow Routine* focuses on the transition from Jim Crow to what came after, the legal system that we currently have in place today. According to Berrey, pressure from black activists, the federal government, and the national media intensified so much during the civil rights era that white southerners abandoned the formal law of segregation and the elaborate unwritten scripts that went along with it, moving instead toward more subtle forms of control, most revolving around prisons and police. In a revealing passage, for example, Berrey provides evidence that the Mississippi Sovereignty Commission deliberately and surreptitiously tracked civil rights activists in the state, often harrying them with arrests for minor quality-of-life offenses, traffic violations, and so on – not violations of Jim Crow law.

This is a significant find, foreshadowing a move to the very type of colorblindness that Michelle Alexander has argued characterizes the “New Jim Crow,” a system of racial repression that relies on the biased enforcement of ostensibly neutral criminal laws. And, while Alexander argues that the New Jim Crow began during the War on Drugs in the 1980s, Berrey provides evidence that it actually emerged earlier, in the 1960s.

However, Berrey misses an opportunity to take his rich understanding of Jim Crow and bring it to bear on Alexander’s argument about legacies. For example, Berrey’s attention to codes of social performance forged in the Jim Crow South provides new perspective on how those codes may have evolved during the 1950s and 60s, and travelled to the urban North. According to conservative social theorist Thomas Sowell, for example, southern blacks learned violent codes of honor from southern whites, and took those codes with them as they migrated out of the South during and after World War II. These codes, which sociologist Elijah Anderson has termed “codes of the street” were arguably descendants of the Jim Crow routine, unwritten rules that demanded a certain deference, or respect, that, if not met, invited violence. According to criminologist Barry Latzer, such codes of violence, forged in the American South, help explain spikes in urban violence following southern migrations to the urban North in the 1960s, and continue to plague urban communities even today, a point Latzer raises in his new book, *The Rise and*

Fall of Violent Crime in America.

Berrey's take on Latzer, Anderson, and Sowell would be of interest, not least because their discussions of unwritten codes of honor, forged in the South, seem to dovetail with Berrey's formulation of the Jim Crow routine, suggesting that the extreme violence that characterized southern white society came gradually to influence southern black society as well. As it stands, however, *The Jim Crow Routine* remains important for what it tells us about the intersection of customary law and legal codes in the post-bellum, pre-*Brown* South. If Berrey is right, then the written law of Jim Crow may not have been as important as previously thought, an elaborate artifice, to be sure, but not as critical to the ordering of southern life as unwritten norms, or what Berrey terms the "Jim Crow routine."

Cite as: Anders Walker, *Jim Crow's Unwritten Code*, JOTWELL (January 16, 2017) (reviewing Stephen A. Berrey, **The Jim Crow Routine: Everyday Performances of Race, Civil Rights, and Segregation in Mississippi** (2015)), <https://legalhist.jotwell.com/jim-crows-unwritten-code/>.