

**Christopher Waldrep.** *Roots of Disorder: Race and Criminal Justice in the American South, 1817-1880.* Urbana: University of Illinois Press, 1998. xiv + 267 pp. \$45.00, cloth, ISBN 978-0-252-02425-2.



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Historians of nineteenth-century America have long made productive use of state appellate court records to explore historically significant legal cases. But, for good reasons, scholars interested in the intersection of law and society have made far less use of the records generated by the lower courts, often denominated "district" or "circuit," through which most of American criminal justice has been administered. Often available only at the pleasure (or mercy) of county clerk of court's offices, through their understaffed and overworked employees, in facilities never intended for historical research, lower criminal court records are sometimes difficult or impossible to use (locked in vaults or attics; damaged or destroyed by fires or floods). But such records contain a wealth of information about the everyday administration of criminal justice, and all of its social dimensions, in a particular locale. In *Roots of Disorder*, Christopher Waldrep has used an especially rich and accessible collection of court records, from Warren County, Mississippi, of which Vicksburg is the seat, to perceptively illu-

minate the functioning of courts, and popular perceptions of law, in the nineteenth century South.

Waldrep charts a dualistic tension in white Mississippians' reception of law from the inception of the southwestern cotton frontier in the 1810s and 20s through "Redemption" in the late 1870s. Like many Americans, residents of Warren County sometimes embraced "constitutionalism," a belief in the innate virtue of law and the benefits of adherence to a legal order. But Warren County denizens also expressed considerable ambivalence about the formal legal system, and frequently abandoned it in favor of extralegal arrangements (pp. 15-17). As in so much of American, and southern life, white Mississippians' attitudes towards law, and their willingness to manipulate or jettison the legal system for a favored end, often hinged on race.

Waldrep begins by tracing the tension between law and extra-legal "ordering" in antebellum Warren County. Whites made frequent recourse to magistrates to settle personal disputes, and county authorities increasingly sought to regulate the community through prosecutions for

public safety and nuisance after 1831 (pp. 16-18; 42-43). But duels, with their informal and sometimes deadly settlement of personal disputes of honor, and a vigilante movement in Vicksburg that targeted gamblers and murdered five in 1835, expressed Warren County residents' occasional preference for solutions outside the purview of formal law (pp. 25, 27-29).

Slavery, however, most fully displayed the profound stress between antebellum white Mississippians' notions of law and concern with order. In a skillful, original examination of court cases, in Chapter Three, Waldrep unveils the surprising extent to which criminal courts observed due process protections in cases involving slave defendants. Yet this analysis underlines why white Mississippians seldom relied on the criminal justice system for the maintenance of white supremacy: the law extended an abstract (if oft-unrealized) promise of equality that could at least subtly undermine racial hierarchy. And this helps to explain why slaves seldom made it into legal process at all. Abetted by Mississippi state law, which was written to keep slaves out of court, planters, overseers, and the slave patrol instead used informal police powers, including floggings and killings, to punish African Americans and regulate the slave population.

The Civil War, with its dramatic implications for Warren County, including Union military occupation and emancipation, reconfigured Mississippians' relationships with the law. During Presidential Reconstruction, planters sought to reimpose the racial control of labor through the short-lived Black Codes, most particularly through county courts, a novel attempt to use law to discipline African Americans. The county courts offered limited appellate process and imposed draconian punishments, such as hanging by the thumbs (pp. 106, 117). For their part, throughout Reconstruction African Americans laid extensive claim to the benefits of law and citizenship. Blacks engaged legal process by taking disputes to court,

seeking prosecution of crimes committed against them, and serving as grand and petit jurors and witnesses (pp. 112, 114-15, 129-30, 133, 139-41, 144-45).

However, the social upheaval of Reconstruction also inspired solidarity among diverse whites that included planters, northern immigrants, poor whites, and Irish. As elsewhere in the South, whites "redeemed" Warren County from Republicans and black county officials through a prolonged paramilitary campaign in 1874-75 that claimed a number of African American lives (pp. 162-67). In conclusion, Waldrep writes that, by 1880, important patterns had been established for the postbellum legal culture of Warren County. Courts became more protective of property and less concerned with violent crime than they had been in the antebellum era, and extralegal measures, sometimes in the form of lynching, became the predominant means through which planters exerted racial control (pp. 98, 171, 173).[1]

*Roots of Disorder* is a valuable, and in some ways unprecedented, study. Its creation of a detailed socio-legal portrait of a Mississippi county from myriad court records contributes significantly to our understanding of southern criminal justice and violence. The book's resistance of the too-prevalent compartmentalization of nineteenth-century history into antebellum, Civil War and Reconstruction, and postbellum eras, is especially noteworthy. Waldrep's long-term view permits him to trace tendencies and developments in southern perceptions of race and law with an uncommon discernment and depth. Moreover, the book painstakingly and convincingly reconstructs worlds of local social relations and politics from scattered records which often elude simple interpretation. Waldrep has wedded a mastery of the secondary literature and the conceptual grounds at stake in legal history with a deep sensitivity to local nuance.

The book's many strengths outweigh several weaker areas. Waldrep surveys the growth of

Vicksburg and describes tensions between planters and merchants in Warren County over law. But he could have more fully depicted antebellum Vicksburg, which was an important cotton entrepot. Urban merchants' advocacy of legal process sometimes clashed markedly with planters' preference for informal police powers and extralegal violence. This disparity between urban middle class interests and preference for law, which would ostensibly ensure social order and smooth commercial development, and a rural and working class preference for "rough justice," the harsh, communal, and often informal enforcement of the social control of crime, became a major theme in postbellum Louisiana, for instance. [2] One suspects that this cultural divergence, related to capitalist transformation, had roots in the antebellum South, even if it was powerfully confined by the South's uneven transition to capitalism and its small middle class.

An extended analysis of the 1835 vigilante movement in Vicksburg would also have been revealing. Perhaps lacking substantive sources, Waldrep treats this episode in a single paragraph. Historians have generally overlooked an important transition in American violence that occurred on the southern and western frontiers in the antebellum period. Vigilantism transformed from non-lethal communal sanctioning (primarily flogging) into collective killings (highly organized vigilante movements that hanged class and racial enemies and perpetrators of serious crimes). This transformation came about in places like Illinois in the 1820s and 30s, Mississippi in the 1830s, Missouri in the early 1840s, Iowa in the 1840s and 50s, and California in the 1850s. The class and ideological dimensions of the collective murder of the gamblers in Vicksburg, only hinted at here, were certainly an aspect of this transregional trend.[3]

Finally, along similar lines, Waldrep is aware of the national implications of his findings, but sometimes clings too tenaciously to regional distinctions and to the limitations of regional history.

For instance, he writes that northerners who arrived in Vicksburg in the 1860s were unfamiliar with extralegal violence, but nonetheless soon found themselves acting like southerners (p. 76). In fact northern soldiers who were midwesterners would have been familiar with lynching and collective violence, which had no regional boundaries. Indeed, two decades later, in the 1880s, a wave of mob violence swept the Midwest and West, albeit in different contexts and on a much smaller scale than in the South. But, as in Mississippi, perceptions of the criminal justice system played an important role. Rural and working class midwesterners and westerners also advocated "rough justice," specifically the execution, legal or extralegal, of those they perceived as heinous criminals. They were opposed by an urban bourgeois element, larger and more influential than in the South, which stressed the virtues of due process law and a death penalty purged of its older communal aspects, for social order and the flow of capital.[4] But regardless of these minor caveats, those interested in the social history of legal institutions in nineteenth century America will learn much from Waldrep's important study.

#### Notes:

[1]. For comparison, see Neil R. McMillen's fine treatment of race and law in late nineteenth and early twentieth century Mississippi, in *Dark Journey: Black Mississippians in the Age of Jim Crow* (Urbana, 1989), Chapters Six and Seven, "Jim Crow's Courts" and "Judge Lynch's Court." McMillen relies mainly on appellate court records, and somewhat analogously finds that white interests, expressed in a differential "negro law," drove the treatment of African Americans in the courtroom. Authorities punished alleged interracial offenses severely; planters often utilized informal police powers. Black-on-black crimes met harsh punishment only when they catalyzed white anxieties. Recent studies of postbellum lynching that stress labor control in a cotton economy include W. Fitzhugh Brundage, *Lynching in*

*the New South: Georgia and Virginia, 1880-1930* (Urbana, 1930), 108-111; Terrence Finnegan, "'At the Hands of Parties Unknown': Lynching in Mississippi and South Carolina," (Ph.D. dissertation, University of Illinois, 1993), 189-190, 199-202; Stewart E. Tolnay and E.M. Beck, *Festival of Violence: An Analysis of Southern Lynchings, 1882-1930* (Urbana, 1995), 118-160; and Michael J. Pfeifer, "Lynching and Criminal Justice in Regional Context: Iowa, Wyoming, and Louisiana, 1878-1946," (Ph.D. dissertation, University of Iowa, 1998), 255-256, 258-273.

[2]. See Pfeifer, "Lynching in Regional Context," 252-310, for an analysis of the implications of culture and class for lynching and criminal justice in north Louisiana.

[3]. The South Carolina Regulator movement of 1767-69, which substantially predated the later vigilante movements, served as an archetype for the antebellum developments, although it does not explain them. For a pathbreaking and insightful overview, see Richard Maxwell Brown, "The American Vigilante Movement," in *Strain of Violence: Historical Studies of American Violence and Vigilantism* (New York, 1975), 95-133, and Appendix 3, 305-319. Of the vigilante movements, only the collective violence in San Francisco in the 1850s has received sustained scholarly attention. See Robert M. Senkewicz, *Vigilantes in Gold Rush Francisco* (Stanford, Cal., 1985).

[4]. Pfeifer, "Lynching in Regional Context," 1-139, considers the experience of Iowa and Wyoming. For a brief summary for Iowa, see Pfeifer, "Insanity, Sexuality, and the Gallows in Late Nineteenth-Century Iowa: The Case of Chester Bellows," *Annals of Iowa*, Vol. 57, no. 4 (Fall 1998), 333-335.

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