Neal McMillen, *Dark Journey: Black Mississippians in the Age of Jim Crow* (Urbana: University of Illinois Press, 1990)

"Negro Law"

…In cases in which blacks were accused of serious crimes against whites, justice in the courts of Jim Crow Mississippi was often swift and harsh, and rarely color-blind.

Indeed, as a growing body of recent scholarship suggests, black defendants in Mississippi courts in the half century after 1890 may have enjoyed relatively less procedural fairness than did slaves. Accused slaves, of course, were tried under laws that explicitly denied human equality.[12] As both chattel and people they were legally regarded more often as property than persons. And though recognized under the criminal law primarily as persons, they were persons of a particular and carefully circumscribed kind—in the revealing language of the Mississippi Supreme Court, they were "artificial" persons subject not to the common law but to a code "wholly differing in its character" from that created for "natural persons" or citizens. "Experience has proved," the high court affirmed in 1859, "... that masters and slaves cannot be governed by the same laws. So different in position, in rights, in duties, they cannot be the subjects of a common system of laws." Whether in the definition of offenses, the assignment of penalties, the designation of special tribunals, the regulation of testimony, or the provision for appeal, in every step of the judicial process, the slave was set apart from "the superior race, the white man."[13]

Such legal anomalies, like the peculiar institution that fostered them, were casualties of the Civil War. In the narrow sense of formal law, black and white defendants of postbellum Mississippi confronted the judicial system on equal terms. "There is no provision in the constitution of this state, no law on the statute book," the state attorney general asserted in 1896, "that *per se* can be said to be directed by way of discriminating against negroes." Although disingenuous, this statement is technically true. So too is the quaint high court dictum of 1906: "Mulattoes, negroes, Malays, whites, millionaires, paupers, princes and kings, in the courts of Mississippi, are on precisely the same exactly equal footing."[14]

As a practical matter, however, the advantages of freedom could be easily overstated. Under the equal protection and due process clauses of the Fourteenth Amendment, blacks had the same claim to justice as whites, yet their circumstances not infrequently precluded the exercise of that claim. Economically dependent and politically impotent, they were at best quasi-citizens without direct influence over public affairs. Effectively denied access to the

basic instruments of citizenship by which free peoples safeguard their most elementary civic rights, black demands for police protection and justice in the courts could be safely ignored in a polity exclusively of, by, and for whites.

Indeed, the Fourteenth Amendment notwithstanding, the antebellum slave code had its informal postbellum equivalent in what attorney Sidney Fant Davis called "negro law." De facto distinctions between "artificial" and "natural" persons remained central to day-to-day law enforcement in Mississippi. Davis, a future Sunflower County circuit judge (1920-1928), acknowledged in 1914 that a person reading the state's criminal and civil codes might logically conclude that these laws applied equally to both whites and blacks: "But nothing could be farther from the truth," he noted, for state laws were selectively enforced, and Mississippi judges, lawyers, and jurors knew, as if by instinct, that some applied to both races, some only to whites, and some just to blacks. Negro law, "an important branch of the law here in Mississippi," was unwritten, learned only through experience and observation, and fully understood, Davis believed, only by the native-born. In a society in which race mattered above all else, "negro law" determined who was punished for what. Bigamy, like most other crimes of morality, was a white crime, and one not enforced against a "naturally" promiscuous and faithless race. Saturday night stabbings or thievery between blacks were often not crimes. Petty black theft from a white, on the other hand, was a serious offense in an urban community and often punished by imprisonment. In the rural black belt it was more commonly resolved "out of court," Davis said, in "an ex-parte hearing in the barn," with a "piece of gin belting" or "an old buggy trace."[15]

In freedom as in slavery, then, the planters or, for that matter, the woods-riders or bosses in turpentine and logging camps, were laws unto themselves who administered the whip for a wide range of lesser infractions. Flogging, many whites believed, was still the most effective way to deal with most black crime. "Most of the planters when they catch one of their hands stealing... will take them out and give them a beating and that's the end of it," an Adams County justice of the peace reported on the eve of World War II. "It never gets into court." A planter's wife from the same river county noted that officially sanctioned forms of punishing blacks too often worked against the needs of white landlords: "They can't afford to send them to jail because they need them on the farms; so they just... give them a good beating, and that teaches them."[16]

Although major black infractions were generally prosecuted formally, the law was usually applied in the white interest. "When a white man kills a Negro," Hortense

Powdermaker wrote of Indianola and its environs, "it is hardly considered murder. When a Negro kills a white man, conviction is assured, provided the case is not settled immediately by lynch law."[17] On the other hand, the murder of a black by a black, the most common form of homicide in Mississippi during the half century after 1890, could bring the death penalty if it was exceptionally brutal or cold-blooded, or if the victim was well thought of by local whites. In 1911, when one Judge Collins was tried in Sharkey County for the murder of Rube Boyd, the prosecutor framed his argument for a "necktie party" with white sensibilities in mind: "This bad nigger killed a good nigger. The dead nigger was a white man's nigger, and these bad niggers like to kill that kind." The jury sentenced Collins to die on the gallows. As Collins's black attorney, Willis E. Mollison, lamented, "The average white jury would take it for granted that the killing of a white man's nigger is a more serious offense than the killing of a plain, every-day black man."[18] Under "negro law" the gravity of any crime was determined in large part by its impact on white interests.

Thus when black-on-black crimes aroused white racial fears, offenders were often harshly punished. For example, David Sykes was convicted for killing George McIntosh in 1906. Both men were black, but the state's attorney convinced the jury that Sykes's motive was a desire for McIntosh's wife, a desire that could someday lead to the most heinous of crimes. "You ought to convict him," the prosecutor argued, "because he might rape some of the white women of the country." The defendant was given the death penalty. The honor of white southern womanhood, as the case of Columbus Story (1923) suggests, could be invoked even when a black woman was raped by a black man. In his closing argument for the death sentence, a Holmes county prosecutor reminded the jury that during Story's attack on a "bright mulatto woman," the black man commanded: "White woman stop your hollerin'." "This shows you," the attorney insisted, "where his passions are leading to."[19]

When white interests were not involved, however, the system was usually less exacting, for the offenses of blacks against other blacks were taken less seriously than were other crimes. "We have very little crime," a white Natchezian boasted in the 1930s: "Of course, Negroes knife each other occasionally, but there is little *real* crime. I mean Negroes against whites or whites against each other."[20] According to the Hattiesburg *Progress,* news of black-on-black homicide was not news at all in Mississippi: "One nigger cuts another's throat about the former's wife and that is the last heard of it." In this editor's judgment, "nigger crap shooters kill each other in different parts of the state nearly every day" with impunity; murder among black railroad construction gangs was too common even to be

investigated: “Perhaps not one-third of the murder[er]s are ever arrested. It is like dog chewing on dog and the white people are not interested in the matter. Only another dead nigger—that’s all.”[21]

When black capital offenders were arrested and tried, the proceedings were often tainted by white notions about “negro characteristics.” The criminal justice system reflected the values of the larger white society that regarded blacks as naturally more impulsive and violent than whites and that placed less value on the life and honor of blacks than whites. Brought before the bar of justice for the rape or murder of a person of his own race, the black defendant was far more likely than his white counterpart to confront an indulgent prosecutor willing to exchange a guilty plea for life imprisonment.[22] Such permissiveness, whatever its advantages to the accused, seemed to condone intraracial black lawlessness and offered inadequate protection for black life and property. While it generally served the black community poorly, the paternalistic side of “negro law” had its defenders. As one trial judge explained, it produced verdicts in black cases that were “perfectly satisfactory to all parties concerned”—taxpayers were spared the expense of lengthy trials, defendants eluded the hangman, and the state got additional field hands for the prison farm.[23]

Occasionally, whites interceded with the law on behalf of their black tenants, domestics, or other employees. When “Ike” killed his wife after World War I, he was convicted in Adams County largely on the testimony of “Wash,” “a white man’s nigger.” But Ike’s landlord—who thought “I could have gotten him off, but I didn’t attend to it in time”—arranged to have him released from prison after only one year so that the black man could return to the fields. “He was a good steady negro,” the planter noted, “since he came back.” In 1922 Elizabeth H. Rowe, a black Vicksburg woman, watched as her husband’s black murderer was acquitted upon the request of an influential white. It was common knowledge, she bitterly observed, that many Mississippi whites were loath to lose a good hand to prison, as “the live nigger is worth more than the dead one.”[24]

Given the personal nature of law enforcement and the imperatives of the double standard, a relationship with a white, that of patron to protégé, could figure importantly in court. One of the first questions a black-belt magistrate might ask was, “Whose nigger are you?” A defendant linked to a white man of influence could expect to be “let off lightly,” as David Cohn explained. One identified with a lesser white could expect to receive harsher treatment: “If he has no white folks at all, his fate is in the lap of the gods.”[25]

Most crime in Mississippi was intraracial, but when whites victimized blacks, they often escaped trial, even for serious offenses. In an interracial altercation resulting in the death of a black, nearly any white man of good standing could avoid the indignity of a trial, whatever the circumstances. When a Hinds County landlord killed two unarmed black trespassers in 1911, for example, the Jackson *Daily News* explained, under the headline "FARMER SLAVED TWO BAD BLACKS," that the killings were "justifiable," so the white man "was not put to any trouble by the county authorities."[26] Moreover, black victims of white crime often prudently declined to press charges.[27] White lawyers were reluctant to accept such cases, white police and prosecutors rarely encouraged blacks to press charges, and some local magistrates simply denied black victims the protection of the law. Again, a Hinds County incident illustrates the problem. In 1897, a black woman who complained that she had been beaten with an axe handle was denied her hour in court by a justice of the peace who could find "no law to punish a white man for beating a negro woman." When a Jackson police court also turned her away, the local press dismissed the matter as "a very funny incident."[28]

In apparently open-and-shut cases whites could be convicted, but the punishments assigned often reflected white notions of black worth. In 1930, for example, a Yazoo City white man was charged with raping a seven-year-old black girl in the presence of her five-year-old sister. Because whites generally agreed that no black female above the age of puberty was chaste, the victim's age seems at least as crucial to the proceeding as the quality of the state's evidence. After extended deliberation, the jury voted to convict, but then could not agree on the sentence. By default, the defendant received a life term. If the race of the child and her attacker had been reversed, no sentence less than death would have been imaginable.[29]

In sum, "negro law" was, to quote Judge Davis again, "one of the most complicated branches of the law," one learned only by "experience and observation." To the literal-minded—and particularly to outsiders bewildered by the obvious gap between the letter of the state's formal legal code and its day-to-day applications—the legal system seemed hopelessly capricious, at once both permissive and severe.[30] Yet "negro law" was anything but irrational. Under its many-layered provisions, white interests were a major concern of prosecutors, jurors, and judges; law enforcement, with rare exception, served the needs of caste. Viewed as a logical and coherent response to the demands of the dominant race, one might even say that the criminal justice system in Mississippi performed its appointed task

well. Although scrupulous impartiality is the ideal, courts in virtually any society are assigned what might be called a parapolitical role. They serve as "access points" at which popular or institutional pressures can be applied to resist social change or to promote majority values.[31] In open societies this role is often subordinated to the citizens' demand for equity and minority rights are advanced. In Jim Crow Mississippi, however, where justice was bound by caste and where full citizenship was a white prerogative, the tension between social justice and social control was nearly always resolved in the interests of the dominant race.

We know much less about what might be called class law, about the relative weight of class vis-a-vis caste on the scales of justice. No doubt poor whites, too, encountered inequities in the criminal justice system. Economic circumstance, however, is the as-yet-unexamined variable in the legal history of Jim Crow Mississippi. The annals of Deep South social relationships, and the evidence presented in this chapter, suggest that race was paramount. But until legal scholars provide the necessary quantitative analyses, until problems of class and caste are studied comparatively, the question must remain open and conclusions must be tentative.