

1-1-2012

## Jury Discrimination: The Supreme Court, Public Opinion, and a Grassroots Fight for Racial Equality in Mississippi (book review)

Amos N. Jones

*Campbell University School of Law*, [ajones@campbell.edu](mailto:ajones@campbell.edu)

Follow this and additional works at: [http://scholarship.law.campbell.edu/fac\\_pubs](http://scholarship.law.campbell.edu/fac_pubs)

---

### Recommended Citation

Amos N. Jones, *Jury Discrimination: The Supreme Court, Public Opinion, and a Grassroots Fight for Racial Equality in Mississippi*, J. African American History, Winter-Spring 2012, at 184 (book review).

This Book Review is brought to you for free and open access by the Faculty Scholarship at Scholarly Repository @ Campbell University School of Law. It has been accepted for inclusion in Other Publications by an authorized administrator of Scholarly Repository @ Campbell University School of Law.

Postwar Republicans and the Evolution of a Party," the last chapter, surveys the major challenges and triumphs of the national Republican Party during the Civil War era. While the key issues, events, and individuals he discusses shed no new light on his subject, Green's insistence that Republicans "could legislate their views, but not enforce them" is quite illuminating. More than a hundred years later, egalitarian lawmakers, human and civil rights activists, and countless other freedom warriors continue to fight what G. Ward Hubbs in the introduction describes as an "unfinished war." Indeed, the most significant shortcoming of this eloquently written, well-researched volume is its failure to connect the country's first Reconstruction to its second and ongoing Reconstructions. Granted, editors Cimbala and Miller did not seek to carry the story forward to the 21st century, but they certainly could have. One more chapter of connective tissue would have sufficed. No serious student or scholar of class and caste, gender and sex, politics and public policy, or ethnic and racial issues in the United States would have complained about reading a few additional pages of solid scholarship. In any case *The Great Task Remaining Before Us* makes an important contribution to Civil War and post-Civil War historiography and is recommended highly for general readers, college or university students, and scholars alike.

Bertis English  
Alabama State University

Christopher Waldrep, *Jury Discrimination: The Supreme Court, Public Opinion, and a Grassroots Fight for Racial Equality in Mississippi*. Athens: University of Georgia Press, 2010. Pp. 325. Cloth \$44.95. Paper \$24.95.

They have been called bulwarks of democracy, cogs in the wheels of representative government, the principal exercisers of judicial review. American juries were of such import to the framers of the Constitution and the people who ratified it that the 7th Amendment provided a right to a jury trial in certain civil cases. The devotion to trial by jury is older than the Republic itself, having arisen, according to many scholars, from traditions established in English life by the 13th century. Ordaining the people as the finders of fact and superintendents of the laws in civil and criminal disputes is taken today as a vital check against oppressive authoritarianism. But what happens when white racism drives state lawmakers to bar large segments of the U.S. population, specifically African American citizens, from eligibility for selection to jury pools? And what happens when those disenfranchised masses are brought into the system following a civil war? Then, what happens when they are systematically removed again under the color of law as

Reconstruction is dismantled? The answer in the case of Warren County, Mississippi, in 1907 is that African Americans are re-enlisted under the authority of the Mississippi Supreme Court, if only briefly.

Historian Christopher Waldrep explains how this happened in *Jury Discrimination: The Supreme Court, Public Opinion, and a Grassroots Fight for Racial Equality in Mississippi*, the first book to identify and explore the causes, effects, and implications of a brief moment in the history of Mississippi law when African Americans were engaged in jury service under the perceived requirement of a ruling of the Mississippi Supreme Court. Scouring Vicksburg newspapers published between the era of slavery through World War II while working on a book on the Civil War, this prolific historian stumbled on the 1907 headlines generated by a court ruling that was, in actuality, modest in terms of jurisprudence, but gargantuan in terms of public significance.

By the early 1880s, the Supreme Court of the United States had decided a number of cases regarding overt racial discrimination in jury selection by striking down West Virginia's all-white jury requirement and invalidating the Delaware Supreme Court's opinion that African Americans were unqualified to serve on juries. Openly discriminating against African Americans was not allowed, though juries still could legally wind up all white, which they often did and continue to do even today.

By 1907 with white supremacy firmly re-entrenched and the 14th Amendment's protections on individuals largely undermined, Waldrep concludes that the first decade of the 20th century was arguably the nadir of black-white relations in the United States, particularly in Mississippi. Waldrep's task was to document the implementation of the Supreme Court's principles in this Mississippi county, then to identify the factors that caused the most famously anti-black state in the country to extend to African Americans eligibility for jury service. In so doing, Waldrep, a historian of race relations in the postbellum South, analyzes voluminous court records and newspaper accounts from both the black and white presses, of a fleeting moment in time when the rule of law in Mississippi, and the tenacity of two exceedingly unusual lawyers, successfully challenged local officials' continuous exclusion of African Americans from juries despite the Supreme Court decisions.

Thomas Dabney Marshall was the unorthodox, and sometimes outcast, former politician, and descendent of Supreme Court Justice John Marshall, who had gone to prison for killing a man in a duel. Duels were illegal but honorable, especially in Marshall's case when the offending party was spreading a rumor that he was homosexual in an effort to wreck Marshall's political career. The scion of an anti-secession, landholding family, Marshall emerged from prison and resumed the practice of law, frequently representing African American clients.

The other lawyer was Willis Mollison, a black newspaper owner and politically connected figure highly regarded statewide as a "race man" who believed that if African Americans showed themselves worthy, whites would eventually accept black equality and restore their civil rights. Rather than endorsing the boycotts and protests in which local black residents had engaged as late as 1904, Mollison turned to civic engagement for black uplift. So it was no surprise that in a 1906 case Mollison and Marshall managed during cross-examination to obtain a white Warren County official's admission of open, overt discrimination in jury selection. Challenging this discrimination all the way to Mississippi Supreme Court proved successful, as the court simply applied the U.S. Supreme Court precedents of 1880-81.

Waldrep reports that the climax of the story comes in the white hysteria surrounding the decision. Headlines in the white press misinterpreting the state supreme court's ruling screamed that juries now were *required* to include African Americans. The board of supervisors apparently accepted that interpretation and immediately began sending black residents jury summonses. And some eventually served. Unfortunately, the Mississippi Supreme Court soon had occasion to clarify its ruling, noting that African Americans could not be overtly excluded from service. With that, the white power structure returned to finding covert ways to exclude African Americans. All-white juries would become the norm in most southern courtrooms, and it was not until the 1980s that the U.S. Supreme Court lessened the onerous evidentiary requirements in proving jury-selection discrimination.

The significance of Waldrep's historical study lies in its implications for the meaning of constitutionalism. Waldrep concludes that Marshall and Mollison's success suggests that legal reasoning plausibly founded on constitutional principle, as articulated by the Supreme Court, could trump even the most stubbornly prejudiced public opinion animated by volatile rhetoric.

One shortcoming of Waldrep's account is his suggestion that this study was breaking new ground in assessing the problem of jury discrimination in the South. However, several prominent legal scholars such as Stephan Landsman, Angela Davis, and Kimberle Crenshaw in various publications have asserted the jury's inextricable relationship to the creation and defense of fundamental rights and claims of liberty, and described attempts at racially based jury discrimination. The absence of contemporary comparisons notwithstanding, Waldrep's powerful insights and ground-breaking historical research should inform current discussions and decisions about racial inclusion in jury service.

Amos Jones  
North Carolina Central University