Book Review (reviewing Christopher Waldrep, Jury Discrimination: The Supreme Court, Public Opinion, and a Grassroots Fight for Racial Equality in Mississippi (2010))

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Christopher Waldrep's new book opens with a dramatic courtroom episode from 1909. It involves, as the author nicely puts it, "an obscure litigation over a forgotten man’s pride and reputation in a small town deep in the Mississippi Delta" (3). Pinkard Dowans, a black man, sued the operators of a white-run newspaper for libel after the newspaper denounced Dowans as “unmanly, unchristian, ungentlemanly,” thereby threatening his livelihood as a traveling lecturer. An all-white jury found in Dowans’ favor. But the perhaps more remarkable moment occurred when, during the trial, it emerged that Dowans himself had been serving on juries. At a time when African-Americans had been systematically forced into second-class citizenship, confined through law and through violence to the margins of public life, a black man in the heart of the Jim Crow South had sat—several times, by his account—on a jury alongside whites. This impressively researched book is, in essence, a wide-ranging historical exploration into how this improbable development could have occurred.

Waldrep begins his study with a wide-angle lens that narrows its focus over the course of the book. The opening chapter traces the history of the right to a jury trial, from its beginnings in medieval England through the drafting of the United States Constitution and the Bill of Rights (which included three jury provisions). The next chapter considers the intersection of race and juries in the ante-bellum period. Trial by jury became a central concern of abolitionists who demanded jury trials for escaped slaves captured in the North, with the assumption that northern juries would block enforcement of fugitive slave laws. The third chapter examines the drafting of the Fourteenth Amendment and the congressional debate over the federal government’s role in protecting civil rights, including jury service. In the next two chapters Waldrep turns to the post-Civil War Supreme Court, drawing extensively on the papers of several justices. These chapters examine the Court’s resistance to a strong nationalist reading of the Fourteenth Amendment and its jury discrimination rulings. Although the Court held that formal exclusion of blacks from juries violated the Fourteenth Amendment, it made proving discrimination exceedingly difficult. By the late nineteenth century, southern juries were almost uniformly white.

The final chapter turns to the grassroots civil rights struggle in Mississippi promised in the book’s subtitle and hinted at throughout the book in brief sketches of its key players at the opening of each of the first five chapters. This fascinating story involves Dabney Marshall, a white lawyer who was sent to prison after killing a man in a duel and emerged with a newfound commitment to racial equality; Willis Millison, an African-American lawyer and
reformer; and John Cashman, editor of the *Vicksburg Evening Post*. These three men, in loose alliance, challenged Mississippi’s all-white jury system. And, amazingly, for a brief period, they achieved a measure of success. In an appeal of a capital conviction, Marshall, with the help of Millison’s testimony and Cashman’s press coverage, convinced Mississippi’s highest court that the United States Supreme Court demanded more serious attention to jury discrimination. Although Marshall’s victory was effectively gutted within a year, in its immediate aftermath some blacks were added to Mississippi jury lists. It was during this period that Pinkard Dowans served as a juror.

One of Waldrep’s goals in this book is to argue that law can and should function on a level that is distinct from politics. He regularly critiques judges and lawmakers for relying upon public opinion rather than “constitutional principle” when interpreting the Constitution. (At a time when public opinion generally supported white supremacy, this critique makes sense; whether it might apply beyond the context of civil rights during Jim Crow is not pursued.) Waldrep also challenges those scholars who have emphasized the limited capacity of the Supreme Court in the face of committed opposition by local actors. With few exceptions, whites in Mississippi were unified around their commitment to white-only juries. Yet, as this book shows, for a brief time, the law of the land, as defined by the Supreme Court, caused blacks to be seated on juries. For Waldrep, this development should not be dismissed as aberrational. “Had the Supreme Court set different evidentiary rules, making it easier to prove discrimination,” he argues, “there might have been tens of thousands of black jurors throughout the nation at the time when whites tried to make and enforce segregation laws” (5). Even if Waldrep’s case study does not necessarily support such a bold claim, this book effectively highlights the variability of Jim Crow—even in Mississippi, even during the darkest years of white supremacist rule—and the sometimes unexpected power of the law.

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Emancipation brought its own diaspora, one that resettled thousands of newly-freed slaves in northern states. In this beautifully researched book, Leslie