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Jim Crow in North Carolina

The Legislative Program from 1865 to 1920

RICHARD A. PASCHAL

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For
Catherine Noelle
and
Richard Allen

Non nobis solum nati sumus

Nations reel and stagger on their way; they make hideous mistakes; they commit frightful wrongs; they do great and beautiful things. And shall we not best guide humanity by telling the truth about all this, so far as the truth is ascertainable?

—W. E. Burghardt Du Bois (1935)

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A Word on Terminology

Here, at the outset, a word should be said about what I mean in this book by “Jim Crow.” I use the phrase “Jim Crow in North Carolina” to refer to all forms of *de jure* discrimination—that is, discrimination “of right” or by government—and not simply with reference to physical segregation or separation based upon race. This book is about discrimination pursuant to law and the operation of law rather than mere spatial separation or *de facto* discrimination by private entities or individuals.¹ There was certainly segregation by private actors that we associate with Jim Crow—think of a theater owner requiring blacks to sit in the balcony—but the focus of this study is on discrimination by and through government and governmental actors.

The precise origins of the phrase “Jim Crow” are difficult to pinpoint, but it came into widespread use in the 1830s with a song, “Jump Jim Crow,” written in its original form and most famously performed by Thomas

1. It should be noted that the U.S. Supreme Court has defined *de jure* segregation in the public school context as “a current condition of segregation resulting from intentional state action.” *Keyes v. School District No. 1, Denver, Colorado*, 413 U.S. 189, 205 (1973). Relying on this intent standard, the Court has held “that ‘the Constitution is not violated by racial imbalance in the schools, without more.’” *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701, 721 (2007) (quoting *Milliken v. Bradley*, 433 U.S. 267, 280 n.14 (1977)). In the present study, however, while virtually all of the laws and their application during the Jim Crow era would qualify as intentional discrimination, the phrase *de jure* discrimination is being used here without regard to intent and, thus, is simply used to distinguish governmental action from non-governmental action.

Dartmouth “Daddy” Rice.² In performing the song, the white Rice was in blackface and he hopped around on stage with one stiff leg and a “laughable limp” and, in between the song’s many verses, he sang the refrain:

Wheel about, turn about,
Do jis so,
An ebery time I wheel about,
I jump Jim Crow!³

The song and Rice became famous both in the United States and abroad, leading a Boston newspaper to claim in 1838 that the “two most popular characters in the world at the present time are [Queen] Victoria and Jim

2. Challenge, *Louisville Daily Journal* (Louisville, Ky.), Jan. 5, 1831, at 3 (letter by “Daddy Rice, Comedian, of the Kentucky Theatres”). See Sol Smith, *Theatrical Management in the West and South for Thirty Years* 65 (1868) (Smith described moving to Louisville for the 1830 fall season at the theater where Rice was a member of the company and who was “busily engaged in composing and arranging his *Jim Crow* songs”).

Although other scholarly works have given various dates for the first performances of the song, the newspaper record suggests that the first performance of the “comic Negro Song, of ‘Jim Crow’” was on May 21, 1830. Advertisement, *Louisville Public Advertiser* (Louisville, Ky.), May 20, 1830, at 3 (performance scheduled for “Friday Evening, May 21 [1830]”).

3. Quoted in An Old Actor’s Memories: What Mr. Edmon S. Conner Recalls About His Career, *N.Y. Times*, June 5, 1881, at 10. Rice wrote numerous verses of the song, performed in blackface, and danced in a comedic imitation of an elderly slave with “the left leg stiff and crooked at the knee, giving him a painful, but at the same time, laughable limp.” Id. at 10. The accounts of people, such as Edmon Conner, who knew and worked with Rice suggest that there was a slave named or nicknamed Jim Crow who worked in a stable behind the Louisville theater and who sang a similar type of song and danced in an unusual manner and whose song, dance, and name were appropriated by Rice. Id. at 10. See Frederic R. Sanborn, “Jump Jim Crow!”—The Opening of an Era, *N.Y. Times*, November 13, 1932, at 8, 15 (describing Rice as “dancing his peculiar step, and rocking his left heel in the manner which generations of his successors have imitated”).

The song had many verses and, eventually, many versions that were not penned by Rice, but the other versions often varied the language and spellings of the refrain in small ways. As for the many different versions of the song, one scholar notes that sheet music to the song published in New York in 1833 had 44 verses; a publication in Boston contained 66 verses; and one published version claimed “50 Verses: The only Correct Copy of the Extravaganza of Jim Crow.” Dale Cockrell, *Demons of Disorder: Early Blackface Minstrels and Their World* 71 (1997). An important cultural study of the song reprints many of the different versions of the lyrics. W.T. Lhamon, Jr., *Jump Jim Crow: Lost Plays, Lyrics, and Street Prose of the First Atlantic Popular Culture* 95–145 (2003).

Crow.”⁴ Despite the popularization of the song, the use of the name “crow” for African Americans antedated Daddy Rice, and earlier references to “Jim Crow” and “John Crow” can be found.⁵ “Crow” was and still is an offensive term for African Americans.⁶ While the song “Jump Jim Crow” popularized the name and made it synonymous with the stereotyped Negro dancing a jig, the name became a placeholder for both slaves and free blacks and, as such, it quickly came into use to signify the segregated areas of antebellum America, often in the Northern states.⁷

4. Cockrell, *supra* note 3, at 161 (quoting *Boston Post*, July 22, 1838).

5. In 1828, two years *before* Rice wrote and performed the first version of his song, there is criticism of a “Jim Crow poet” who wrote a letter or editorial in a newspaper in support of Andrew Jackson because, in reply, another writer argued that the “Jim Crow poet” intentionally misled people about Andrew Jackson’s commitment to the Union—this being the time that John C. Calhoun was arguing in favor of nullification of the Tariff of 1828. *The Torch Light and Public Advertiser* (Hagerstown, Md.), Aug. 14, 1828, at 4 (internal quotation marks omitted).

See also Selections, *Edenton Gazette* (Edenton, N.C.), Sept. 2, 1830, at 1 (story referring to “John Crow the black . . . singing at the top of his pipe”) (reprinting Heat and Thirst,—A Scene in Jamaica, 27 *Blackwood’s Edinburgh Magazine* (Edinburgh, Scotland), June 1830, at 861 (the spelling used here in original was “Johncrow”).

6. See *Webster’s Third New International Dictionary* 544 (2002) (definition 7 for crow is “Negro—usu. taken to be offensive”); 1 *Random House Historical Dictionary of American Slang* 528 (J.E. Lighter ed., 1994) (definition 2 for crow is “a black person.—used contemptuously”). See also Maya Angelou, *I Know Why the Caged Bird Sings* 106 (Random House 2002) (1969) (“It was a dangerous practice to call a Negro anything that could be loosely construed as insulting because of the centuries of their having been called niggers, jigs, dinges, blackbirds, crows, boots and spooks.”). In 1823, James Fenimore Cooper in *The Pioneers* had the character Billy Kirby, a white wood cutter, tell the black character Abraham Freeborn, also known as Brom, to “Shut your oven [i.e., mouth], you crow.” James Fenimore Cooper, *The Pioneers*, in James Fenimore Cooper, *The Leatherstocking Tales: Volume 1*, at 198 (Library of America ed. 1985).

A broader view of the early nineteenth century suggests that Jim Crow was a phrase in general use in America outside of that one particular song and that it was often a disparaging generic name for African Americans. In addition, the phrase was often invoked in Northern abolitionist newspapers such as William Lloyd Garrison’s *The Liberator*, which noted in 1839 that “there is usually attached to rail-road trains what is called a ‘Jim Crow’ car, in which colored persons . . . are compelled to ride.” Mean Conduct, *The Liberator* (Boston, Mass.), Sept. 20, 1839, at 3. There continued to be references to “the Jim Crow car,” Communications, *Anti-Slavery Bugle* (Lisbon, Oh.), June 26, 1858, at 2, and “the ‘Jim Crow’ pew in the churches,” Progress of ‘Fanaticism’ in Rhode Island, *The Liberator* (Boston, Mass.), July 2, 1858, at 4, throughout the decades before the Civil War.

7. A word on the use of racial terminology in this book is in order. While I generally use the modern, preferred terms African American and black and American Indian and

While there was a post-Civil War period when to “jump Jim Crow” meant an inconstancy of beliefs or vacillation as to political policy posi-

Native American in my general analysis sections, I use idiomatic terms such as Negro and colored and Indian in other sections of the book. I do this for several reasons. First, the statutes and census reports from the period covered by this book used these words, often with specific meanings and, for me, the use of the statutory terminology maintains a verbal consistency. For example, when the laws from this period aimed to define who counted as a “Negro” for issues of marriage and admission to schools, it is problematic to transcribe the terms into modern phrasing, as it would be rendered as “the law defined African Americans as anyone of Negro ancestry to the fourth generation inclusive.” See 1871–72 N.C. Sess. Laws 328, ch. 193, § 2 (“negro” defined with relation to marriage). Similarly, publications from this period such as the U.S. Census often use “colored” to mean all non-whites and did not always separate out the numbers for different minorities. But, in addition, I use these terms precisely because they are idiomatic and tied to the period under review. These terms anchor the statutes, political campaigns, and culture that are the subject of this book. To mix the statutes and language from 1895 with “African American,” in particular, would unduly mix modern and distant sensibilities. To say that “the North Carolina White Supremacy Campaigns of 1898 and 1900 aimed to marginalize African Americans” is more jumble than accurate. Thus, these terms are used with regard to historical context and not as general terms of reference. In his study of this period, historian Leon Litwack set out a similar nomenclature: “For the purposes of this work, the terms ‘Negro’ and ‘black’ are both employed, though ‘Negro’ is generally confined to black people as the objects of white concerns, attitudes, and policies.” Leon F. Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow* at xvii (1998). See also Randall Kennedy, *Race, Crime, and the Law* xii n.* (1997).

It should also be acknowledged that this book reflects the socially constructed idea of “race” which was especially evident during the period that is the focus of this book and which lingers in America to the present day. The idea and definition of black and white and Indian during the period under review were created by the society and not by nature or biology. See, e.g., 1866 N.C. Sess. Laws 99, ch. 40, § 1 (“That negroes and their issue, even where one ancestor in each succeeding generation to the fourth inclusive, is white, shall be deemed persons of color.”); 1871–72 N.C. Sess. Laws 328, ch. 193, § 2 (“All marriages between a white person and a negro or Indian, or between a white person and a person of negro or Indian descent, to the third generation inclusive . . . shall be void.”). As Barbara Fields recognized, “To assume, by intention or default, that race is a phenomenon outside history is to take up a position within the terrain of racialist ideology and to become its unknowing—and therefore uncontesting—victim.” Barbara J. Fields, *Ideology and Race in American History*, in *Region, Race, and Reconstruction: Essays in Honor of C. Vann Woodward* 143, 144 (J. Morgan Kousser and James M. McPherson eds., 1982). However, it should be noted that there are scientists who currently maintain that there may be some link between peoples and genetics. With the advent of DNA sequencing technology, geneticist David Reich has stated that “we are learning that while race may be a social construct, differences in genetic ancestry that happen to correlate to many of today’s racial constructs are real.” David Reich, “Race” in the Age of Modern Genetics, *N.Y. Times*, Mar. 25, 2018, at SR1, SR4.

tions,⁸ that particular meaning faded from view in favor of the one referencing racial segregation and discrimination, and yet the phrase “Jim Crow” has never been defined with precision. Connotatively, Jim Crow evokes segregation and separate facilities based on race. However, I use the phrase “Jim Crow” in this book to mean any law or governmental action that discriminated based on race.⁹ Jim Crow is often associated with segregation, but there is no way to disentangle any analysis of racial segregation from the larger patterns of discrimination against non-whites. Even in his book *The Strange Career of Jim Crow*, C. Vann Woodward was inexact in how he used the phrase. Woodward wrote that his study was on segregation and the “physical separation of people for reasons of race.”¹⁰ Nevertheless, among the subjects of *de jure* discrimination he examined, Woodward devoted the most space to disenfranchisement, which is a subject that is not, strictly speaking, about physical space.¹¹ There were never white voting booths and colored voting booths. But, it seems perfectly appropriate to refer to disenfranchisement as a part of Jim Crow in North Carolina. In addition, in *Strange Career*, Woodward highlighted “jury service . . . and other matters that go well beyond mere separation.”¹² Thus, as Leon Litwack concluded, “What the white South insisted upon was not so much separation of the races as subordination, a system of controls in which whites prescribed the rules of racial conduct and contact and meted out the punishments.”¹³ Trying to define some distinction between

8. See, e.g., Republicans Jumping Jim Crow, *Brooklyn Daily Eagle* (Brooklyn, N.Y.), Sept. 11, 1877, at 1. See also *The Tennessean* (Nashville, Tenn.), Sept. 3, 1875, at 1 (“Senator Oglesby, of Illinois, is to make a speech in Cincinnati to-day [sic]. It is expected he flopped on the currency question at the same time with Senators Morton and Ferry, and will publicly stultify himself accordingly. [Senators] Morton, Oglesby, Brownlow—whew! how they jump Jim Crow.”).

9. Cf. *Black’s Law Dictionary* 964 (10th ed. 2014) (“Jim Crow law” defined as “[a] law enacted or purposely interpreted to discriminate against blacks, such as a law requiring separate restrooms for blacks and whites”).

10. C. Vann Woodward, *The Strange Career of Jim Crow* at xi (3d rev. ed. 1974).

11. *Id.*, at 83–85.

12. Howard N. Rabinowitz, More than the Woodward Thesis: Assessing *The Strange Career of Jim Crow*, 75 *Journal of American History* 843, 847 (1988).

13. Leon F. Litwack, Jim Crow Blues, *OAH Magazine of History*, Jan. 2004, at 7, 9. The phrase is often used in this broader, more inclusive way today, as with Michelle Alexander’s important book on the racially disparate impact of the American criminal justice system. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010). The value of the Jim Crow analogy to the criminal justice system has

segregation and subordination is not a particularly worthwhile exercise, at least for present purposes. Thus, this book on the Jim Crow laws of North Carolina is concerned with the ways that *de jure* discrimination negatively impacted people of color, *simpliciter*.

been questioned in James Forman, Jr., Racial Critiques of Mass Incarceration: Beyond the New Jim Crow, 87 *N.Y.U. Law Review* 21 (2012). The phrase “Jim Crow” continues to be employed in other contexts, as well. For example, it is used to describe how the foster care system and delinquency impact the education of African Americans. Ellen Marrus, Education in Black America: Is It the New Jim Crow?, 68 *Arkansas Law Review* 27 (2015). And, similar to Woodward’s emphasis on disenfranchisement, the recent spate of restrictive voter laws have been described as “Jim Crow 2.0.” Keith G. Bentele and Erin E. O’Brien, Jim Crow 2.0? Why States Consider and Adopt Restrictive Voter Access Policies, 11 *Perspectives on Politics* 1088 (2013).