Book Note

The Klan on Trial

The Great South Carolina Ku Klux Klan Trials, 1871–1872. By Lou Falkner Williams.* *Athens: University of Georgia Press*, 1996. Pp. xiii, 197. $35.00.

Led by James Goodman's *Stories of Scottsboro*,[1] a number of recent studies have sought to situate legal practice in a complex and fragmented cultural context by telling the stories of particular legal proceedings.[2] The attractiveness of trial histories to cultural and legal historians is readily apparent. A trial episode is a narrow story that can be described in all of its depth and complexity, giving due weight to the meaning of legal practice for multiple constituencies. But if the risk of local histories is a parochialism that loses sight of how the particular is embedded in broader networks of power, the trial history can provide a narrative that links local histories to a broader public sphere in which issues of power and meaning are actively negotiated. By fusing these two elements—local complexity and what historian Thomas Bender has called "public culture"[3]—trial histories at their best can weave intensive microstudies into nuanced conceptions of a whole.

Lou Falkner Williams's *The Great South Carolina Ku Klux Klan Trials, 1871–1872* is a trial history that seeks to forge these kinds of links between the particular and the general. In this case, the particular is a series of prosecutions of Klansmen in South Carolina under newly minted federal civil

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1. JAMES GOODMAN, STORIES OF SCOTTSBORO (1994).

2. *See, e.g.*, GARY DEAN BEST, WITCH HUNT IN WISE COUNTY (1994); AMY GILMAN SREBNICK, THE MYSTERIOUS DEATH OF MARY ROGERS (1995); STEPHEN J. WHITFIELD, A DEATH IN THE DELTA THE STORY OF EMMETT TILL (1988); Constance Backhouse, *The White Women's Labor Laws Anti-Chinese Racism in Early Twentieth-Century Canada*, 14 LAW & HIST. REV. 315 (1996); Robert A. Ferguson, *Story and Transcription in the Trial of John Brown*, 6 YALE J.L. & HUMAN. 37 (1994); Richard Wightman Fox, *Intimacy on Trial: Cultural Meanings of the Beecher-Tilton Affair*, *in* THE POWER OF CULTURE (Richard Wightman Fox & T.J. Jackson Lears eds., 1993); *see also* Hendrik Hartog, *Snakes in Ireland A Conversation with Willard Hurst*, 12 LAW & HIST. REV. 370, 390 (1994) (quoting Hurst expressing disappointment in "the relative absence of specific case studies of human interaction with the law"), Robert Weisberg, *Proclaiming Trials as Narratives: Premises and Pretenses*, *in* LAW'S STORIES 61, 75–83 (Peter Brooks & Paul Gewirtz eds., 1996) (discussing trial histories in context of law and literature movement).

3. Thomas Bender, *Wholes and Parts: The Need for Synthesis in American History*, 73 J. AM. HIST. 120, 126 (1986).

rights legislation; the general is the moment of constitutional flux during the years immediately following the enactment of the Fourteenth Amendment. Concentrating on the roles of the lawyers for both sides and the bench, Professor Williams argues that the South Carolina trials represented "in microcosm the reasons why constitutional doctrines and a rule of law sufficient to protect the former slaves in all the rights of citizenship did not emerge" from the debate over the relationships among nation, state, and citizen during Reconstruction (p. 146). The trials, she claims, pitted an intransigent white South against a white North that was hampered, first, by traditional theories of dual federalism, and, second, by growing pressure for sectional reconciliation. Ultimately, "ongoing dependence on federal muscle" proved to be "no substitute for the consent of the governed" (p. 126). Williams's argument is plausible—even convincing. But it seems to present only part of the story. Focusing her account almost exclusively on the legal professionals in the case, Professor Williams glosses over the critical roles of a wide variety of actors in the trials; in the process, she misses much of the complexity that characterizes the best trial histories.

The story of the South Carolina Klan trials is familiar terrain to historians of Reconstruction.[4] Following the white Union Reform Party's defeat in the state elections of 1870, the Klan initiated a reign of terror in the upper Piedmont that continued through the fall of 1871 (pp. 28–29). Under authority of the Ku Klux Klan Act of 1871,[5] President Ulysses S. Grant suspended habeas corpus on October 17, 1871 in nine upcountry counties; mass arrests followed.[6] Beginning in November, federal prosecutors brought indictments against Klan members under the Klan Act and the Enforcement Act of 1870,[7] which sought to protect black political and civil rights from both public and private violation.

There is something of a scholarly consensus that the apex of Klan violence in the Reconstruction South was reached in South Carolina's upcountry,[8] and Williams's first two chapters describe the charged political context from which the violence emerged. Williams argues that when the Union Reform platform was defeated, "white South Carolinians, in their frustration, mounted a campaign of violence designed to restore familiar social standards and

4. Other accounts of Klan activity in South Carolina in 1870 and 1871, and of the trials that followed, include ERIC FONER, RECONSTRUCTION 425–59 (1988); ROBERT J. KACZOROWSKI, THE POLITICS OF JUDICIAL INTERPRETATION 88–91 (1985); ALLEN W. TRELEASE, WHITE TERROR 349–80, 401–08 (1971); JOEL WILLIAMSON, AFTER SLAVERY 261–66 (1965); and Kermit L. Hall, *Political Power and Constitutional Legitimacy: The South Carolina Ku Klux Klan Trials, 1871–1872*, 33 EMORY L.J. 921 (1984).

5. Ku Klux Klan Act of 1871, ch. 22, § 4, 17 Stat. 13, 14–15.

6. *See* FONER, *supra* note 4, at 457–58. In an unfortunate oversight, Williams inexplicably provides three different dates for the suspension of habeas corpus in the space of less than 20 pages: April 1871 (p. 29), the correct date of October 1871 (p. 39), and November 1871 (p. 46).

7. Enforcement Act of May 31, 1870, ch. 114, 16 Stat. 140.

8. *See* FONER, *supra* note 4, at 431; TRELEASE, *supra* note 4, at 349, 362–63.

constitutional liberty" as they understood it (p. 16). In Williams's view, Klan violence was about the reimposition of traditional "values" rather than mere "politics" (p. 29). The critical value at stake, she argues, was "the white male's traditional power" (p. 34). White male South Carolinians shared a "deeply held racism" (p. 53) and a gendered myth of Southern honor that coalesced in the explosion of Klan violence of 1870 and 1871.

Williams may underestimate the extent to which the culture of the upper Piedmont in the Reconstruction years was a culture in flux, in which the structure of labor relations was radically unsettled and in which racial power was being reinscribed alongside gender and class hierarchies.[9] Williams views violence against black women, for example, as "almost incidental" to the Klan's goal of terrorizing the armed black male who threatened the Southern system of honor (p. 35). There is no doubt some tragic truth to the argument that women served as mere placeholders in a power struggle between white and black men, but it cannot explain all of the gendered violence Williams recounts. She describes an episode in which a freedman asked the Klan to beat his wife after she had left him for "keeping" another woman (p. 63). The fact that the Klan complied indicates the extent to which racial and gender subordination were interwoven in Klan violence. The attack on the home of William Champion, a white Republican, is another example that challenges Williams's thesis about the role of black women. Champion was whipped and then forced "to kiss the posterior and 'private parts' of a black woman and the posterior of her [black] husband" (p. 30). Klan members then demanded that he rape the woman, and when he was unable or unwilling to do so, they ordered him to whip the man (p. 30). What is striking about the Champion incident is how the ritualized enforcement of white solidarity was enacted through sexual violence; seen in this light, violence against black women may be more central to the construction of white male authority than Williams allows.[10]

After the first two chapters, Professor Williams leaves behind cultural interpretation to focus almost exclusively on legal professionals: federal prosecutors and investigators, federal judges, and defense counsel. The legal professionals fought over the scope of the Fourteenth Amendment and the constitutionality of the Enforcement Acts passed in 1870[11] and 1871.[12] The prosecution, Williams argues, had two central goals. First, it sought to stretch

9. Foner, for example, emphasizes the ways in which Klan racial violence served the economic function of enforcing labor discipline. *See* FONER, *supra* note 4, at 428–29. For an account that sets Klan violence within a context of class as well as racial struggle, see JULIE SAVILLE, THE WORK OF RECONSTRUCTION 127, 129, 139 (1994).

10. *See also* Jacquelyn Dowd Hall, *"The Mind That Burns in Each Body": Women, Rape, and Racial Violence*, *in* POWERS OF DESIRE 328, 332 (Ann Snitow et al. eds., 1983) (arguing against interpretations of interracial rape that see it as mere "transaction between white and black men")

11. Enforcement Act, ch. 114.

12. Ku Klux Klan Act of 1871, ch. 22, § 4, 17 Stat. 13, 14–15.

the state action concept to reach state nonaction. Second, it sought to incorporate the Second and Fourth Amendments against the states (p. 60). If these two legal principles could be won, the Attorney General's office could effectively prosecute Klan members under the Enforcement Acts for violating blacks' rights to bear arms and to be free from unreasonable searches and seizures.

The prosecution lost on both the question of incorporation and the issue of state action. As Williams recounts with considerable facility, David T. Corbin, the United States Attorney for South Carolina, prepared indictments charging Klan members with conspiring to interfere with black voting, conspiring to deprive blacks of equal protection of the laws and equal privileges and immunities, conspiring to deny blacks' Fourth Amendment rights to security from unreasonable search and seizure and Second Amendment rights to bear arms, and state law crimes such as burglary and assault in conjunction with federal civil rights violations (pp. 62–66). Only the voting charge survived the defense's motions to quash. The bench held that Congress had always possessed the authority to protect voters in federal elections as "a power necessary to the existence of Congress" (p. 73), but it also ruled that "Congress [had] framed the Reconstruction Amendments in a narrow, negative fashion so as to disturb traditional federal-state relationships as little as possible" (p. 73). The trial court's ruling thus "effectively curbed all the broader aims of the government attorneys before the first Klansman was ever tried" (p. 71). As Williams points out, the effect of the ruling was to extend federal protection only to males qualifying for the suffrage; violence against women and children was placed beyond the reach of the federal government.

Although the prosecution effort continued through the winter and spring of 1871–72, the constitutional wrangling at the center of Williams's story was largely over. The prosecution, she argues, had achieved "no substantial constitutional gains" (p. 111). It had, however, managed to establish federal authority over voting; in one respect, at least, the South Carolina Klan would have to "yield to the rule of law" (p. 84). The November 1871 term witnessed four trials with five defendants, all of whom were convicted, and forty-nine guilty pleas. There were eighteen convictions after trials in the April term and eighteen more guilty pleas. The vast majority of those charged, however, had yet to be processed: At the end of 1872, an astounding 1200 cases were still pending in South Carolina (p. 123). The federal court in South Carolina was simply overwhelmed. Thus, despite the prosecution's conviction rate, the trials ended in the early summer of 1872, as Williams quotes, "'not with a bang but a whimper'" (p. 111).[13] In the spring of 1873, Attorney General George H. Williams decided to discontinue all trials; in the summer of that year, Grant

13. Quoting T.S. ELIOT, *The Hollow Men*, *in* COLLECTED POEMS 1909–1962, at 79, 82 (1963).

pardoned all those who had been convicted and granted clemency to those not yet tried (p. 125). "Southern intransigence," Williams writes, had "refused to yield to the forces of the national government" (p. 113).

The turn to writing trial histories, of which *The Great South Carolina Ku Klux Klan Trials* is an example, is part of a broader shift in the historical profession to the "micronarrative." Some of the most prominent American historians are now telling the stories of particular episodes in American history that cast light on otherwise hidden social tensions and anxieties.[14] The fear that has been voiced by historians about these kinds of microhistories, however, is that while they contribute enormously to our understanding of particular collections of people at particular moments, they may leave us with a series of abstracted, unconnected stories that cannot link the particular to the general. The trial narrative has the potential to resolve the problem of parochialism in local narrative. To be sure, a potential for distortion necessarily accompanies attempts to extrapolate broad conclusions from narrow premises, and the trial history cannot entirely avoid this danger. Yet the trial narrative has a double capacity to describe history's particularities while mediating between the particular and the general because it tells a local story at a cultural space in which the central concern is the negotiation of political power broadly construed.

When the trial narrative is configured solely as struggle between legal professionals, however, this sense of broad contest over public culture is obscured. Professor Williams's book is undermined by precisely this narrowness of scope. Her description of the Klan trials submerges what the wide array of actors playing key roles in the trials thought about the proceedings. The choices made by blacks who served on juries and as witnesses to invest themselves in the new constitutional regime, for example, form an extraordinarily important part of the story of the Klan trials. Yet these people barely appear in Williams's account. Other constituencies also demand more sustained attention. What, for instance, is one to make of the confessions of the white "pukers" who gave evidence against fellow Klansmen in apparently large numbers (p. 47)? How can these episodes of mass confession be reconciled with Williams's story of committed white Southern intransigence?

In short, Williams's premise that only a select few were sophisticated enough to think about constitutional ideas glosses over the extent to which the Klan trials provided a forum in which a diverse array of constituencies

14. Perhaps the most telling sign of the strength of the attractiveness of the micronarrative is that some of the historians most closely associated with the "new social history" of the 1970s now write episodic narrative histories. *Compare, e.g.*, JOHN DEMOS, A LITTLE COMMONWEALTH (1970), *and* PAUL JOHNSON, A SHOPKEEPER'S MILLENNIUM (1978), *and* SEAN WILENTZ, CHANTS DEMOCRATIC (1984), *with* JOHN DEMOS, THE UNREDEEMED CAPTIVE (1994), *and* PAUL E. JOHNSON & SEAN WILENTZ, THE KINGDOM OF MATTHIAS (1994).

contested the meaning of the American federal system. If the trials provided some blacks the opportunity to invest themselves in American constitutionalism by testifying or serving as jurors, not all victims of Klan violence made that choice. Elias Hill, for example, a crippled black schoolteacher and preacher who was whipped in a particularly brutal Klan attack, responded to Klan violence by leading the emigration of a group of 136 blacks to Liberia in October 1871.[15] Given the dramatic rejection of American constitutionalism by people like Hill, what does it mean that many blacks made different decisions? When we add to the picture the accused Klan members who fled to Canada during the federal intervention (p. 47), what begins to emerge is a picture of the trials as a battle over the meaning of American constitutionalism that resonated throughout the community, a battle in which citizens made choices about whether to exercise voice or exit, and in which a wide array of citizens, black and white, made critical constitutional commitments.

The Great South Carolina Ku Klux Klan Trials succeeds nicely in describing the trials insofar as they posed challenges to federal prosecutors, defense counsel, and the courts. One can only wish that Professor Williams had expanded her field of vision to encompass a wider conception of constitutional struggle. In this wider lens lies the promise of the trial narrative as legal history.

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15. *See* FONER, *supra* note 4, at 431; TRELEASE, *supra* note 4, at 371–72. For an account of black emigration from South Carolina during Reconstruction, see WILLIAMSON, *supra* note 4, at 108–11.