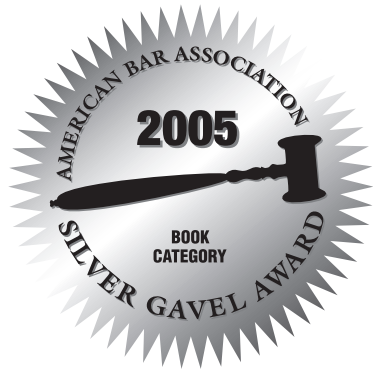


# Black Trials: Citizenship from the Beginning of Slavery to the End of Caste



## COMMITTEE COMMENTARY

*Black Trials* presents 14 chapter-length accounts of trials from the colonial era to the present. In so doing, author Mark Weiner ably links the legal history of black Americans to the development of American national identity as a whole. The personalist nature of the writing allows the book to be read, but it especially encourages it to be felt. *Black Trials* would have merited a Silver Gavel simply by virtue of it being a splendid recounting of important, but often neglected, history. Remarkable historical narrative introduces the reader to biographical features of the English common law and natural law condemnation of slavery in *Somerset's Case* to aspects of the *Civil Rights Cases* that were previously unknown or unpublished. Yet, beneath the years of illuminating research and compellingly fresh narrative in *Black Trials*, there is more. There is also an invitation to all Americans to reflect deeply upon who we are as a people. With a scholar's intellect and always a welcoming conversational tone, Weiner traverses the boundaries of citizenship in the United States and reflects particularly on what it means to be a "people of law." By examining the "trials" of black Americans, the author demonstrates what it has meant over time to be included in the body politic. Readers who engage Weiner's creative blending of history and introspection, so imaginatively and effortlessly accomplished, will be immensely rewarded.

Alfred A. Knopf | New York, New York  
Mark S. Weiner, *Author*



## INTERVIEW with Mark Weiner

*Mark Weiner teaches constitutional law, legal history, and legal ethics at Rutgers School of Law. After graduating from Stanford University, he received a PhD in American studies and JD from Yale University. Black Trials is his first book.*

**How did you write *Black Trials*? What inspired you to develop this book project?**  
*Black Trials* took about six years to complete and it involved a specific challenge for me as a writer. While I approached my work with a strong conceptual framework in mind, I tried to bring the book to life through detail, to collect and present thousands of small items about the trials I examine and their participants, from the color of the jacket a man was wearing when he was hanged for his role in the New York Conspiracy of 1741 to the shape of a particular person's hand or the rhythm of their speech, or how much they paid for a ticket to a San Francisco theater they tried to integrate. I focused my energies on collecting and presenting such small details in part because I thought this would make the book accessible to a general audience, but also because I felt bound to give people largely forgotten to history the dignity of memory, something I view as essential to a democratic society based on the liberal rule of law. To do that, I sought to focus my attention always on the facts before me and divorce myself from all contemporary political or social commitments. The discipline of historical research and writing always has been for me to keep that focus on detail so that my more abstract and general assertions will have meaning and force.

**How do you think *Black Trials* treats or offers insights on legal issues or legal institutions?**

In *Black Trials*, I try to show how the boundaries of citizenship in the United States have been based on a struggle to define the extent to which black Americans should be viewed as a "people of law" (I take the idea from the Old Testament). I view the particular legal events I examine, which I call "black trials," as public rituals in which this struggle for civic definition takes place, not only within the courtroom but also outside it. Those rituals, I explain, have occurred against the backdrop of three competing traditions of popular jurisprudence, three ways in which Americans have understood the nature of

law itself: the first based on liberal principles of individual rights; the second, equally central, based on caste principles of racial purity and pollution; and the third based on Christianity. The struggle to define the symbolic relation of black Americans to the law, I argue, also has been a struggle among these competing jurisprudential traditions. The book is the first broad treatment of African American legal history from the perspective of the narrative, cultural history of law.

**How do you think your book fosters public understanding?**

I hope that *Black Trials* will foster public understanding of how the history of American law is central to what it means to be an American—and specifically how the effort of black Americans to achieve full civic membership under law has shaped how Americans generally understand our common identity, or how we might. In this, I hope that *Black Trials* offers a way of thinking and speaking about law that can help clarify American national ideals both in the wake of the legal victories of the civil rights movement and during a period of domestic political division. My hope is that the book might contribute to the development of a common public discourse about American identity based on the legal history of race and citizenship.

**What does winning this award mean to you?**

This is the greatest honor of my professional life. I had hoped *Black Trials* might contribute to public understanding of the law at the same time that it made a specialized contribution to scholarship—but, like most authors, I have not been immune from self-doubt. The Silver Gavel Award gives me all the encouragement I need to write another book.

*Black Trials* retails for \$26.95 hardcover and \$16.95 paperback and is available from Alfred A. Knopf and booksellers nationwide. To learn more about the book, go online to [www.randomhouse.com](http://www.randomhouse.com) and search by author or title.

### Chapter 8: Original Purity

The hooded men rode for law and honor, breaking into homes at night while their victims slept. One evening, they came for Clem Bowden and his wife, Minerva. It was October 19, 1870, in Spartanburg County, South Carolina. A farmer, a carpenter, and a black man, Bowden, sixty-one years old, lived a few miles northwest of Limestone Springs. "I myself worked about," he would explain months later to three visiting congressmen. "I was clearing up a plantation, and starting it."

As the congressmen listened, a stenographer recorded Bowden's story. They had traveled here, to the South Carolina up-country, in July 1871, as part of a committee investigating the activities of a secret paramilitary group called the Ku Klux Klan. Their charge: to "inquire into the condition of affairs in the late insurrectionary States, so far as regards the execution of the laws, and the safety of the lives and property of the citizens of the United States."

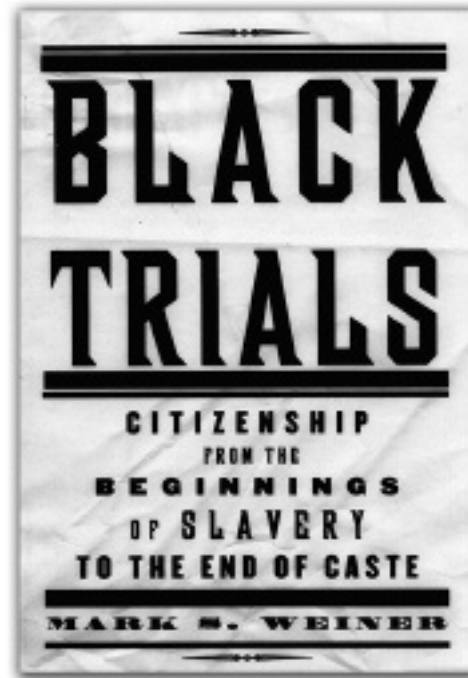
"Begin at the beginning," instructed the committee chairman, Senator John Scott of Pennsylvania, "and tell us the occurrence."

"When they first came to me I was in a chair asleep, and had not stripped," Bowden began. "My family had laid down on the bed. The first thing I heard was the report of pistols, and men going around my house, and then they ran against the door, and by this time a portion of them got around on the other side to the other door, and ran against it and burst it open... They came in the house and laid hold of me... They went to the bed and pulled my wife out...."

[The Bowdens'] story is a horrific portrait of civic violence, but, as we will see, it also was not unusual. It mirrored the experience of thousands of blacks across the South following the surrender at Appomattox as white southerners sought to resist and subvert the liberal civic principles of three new provisions of the federal Constitution: the Reconstruction Amendments.

"Come out here!" the men shouted in the moonlit night, swearing and firing into the air as they broke down Clem Bowden's door. Bursting inside, more than two dozen strong, they ordered one of Bowden's daughters to kindle a light, and searched the home for weapons (they found none). While dogs barked furiously, they dragged Clem and Minerva Bowden outside...

The men had blindfolded Clem Bowden with his coat and put an ox halter chain around his neck. At the field, they kicked up his shirt, pulled down his pants, and made him lie on the ground. With strips of brush, and limbs torn from trees, they began beating him so hard he thought he might die (but "through the Merciful Master I did get away," he testified)...



Leather strap, oak switch, or rope ash, the whip has been an eloquent orator in American civic life. The welts it articulates upon a man or woman's body proclaim a host of political ideas to which few others, short of the noose, could give such clear expression. The whip is the tool but also the rhetorical incarnation of a particular vision of race and jurisprudence. The whip says: you are black flesh only, dirt and blood. It says: you are dead already, honor lost. It says: stay, live in exile beneath us. The whip speaks and, in speaking, endeavors to create a world. Even after the whip ceased to be the enforcer of slavery's dominion, it remained an enforcer of the American caste system. There are few more effective ways one human can humiliate another.

In 1870, the whip spoke with terrifying force in South Carolina, as it did throughout the former Confederacy. The triumph of the Union had set in motion an unprecedented challenge to the foundation of southern society: a demand that blacks be called citizens. The challenge came, especially, from the Thirty-ninth Congress, which included such radicals as Charles Sumner and Thaddeus Stevens, who were enraged by the work of southern legislatures that had gained power under President Johnson's conciliatory postwar administration. Believing that the Confederate states would be promptly reincorporated into the Union on easy terms, southern lead-

ers had enacted a host of so-called Black Codes designed to ensure that if blacks could no longer be slaves, at least their social and political inferiority to whites would be preserved. And so not long after Appomattox, new battle lines were being drawn, with a victorious northern army and a Republican congress arrayed against a recalcitrant South, in a fight over the right of blacks to greater or equal place within national civic life.

### Introduction: Rituals of Citizenship

I consider black trials at three primary levels of meaning. These levels are the doctrinal, the social and biographical, and the symbolic.... The third level of historical meaning in black trials and, for me as a cultural historian, the most interesting, is the symbolic level. A symbolic approach to black trials is based on the perception that the rich, individual details of a legal case, including those taken from their doctrinal and biographical features, may resonate far beyond their literal significance, that they may become symbols in the classic literary sense, standing in for ideas they do not themselves immediately portray (with the same sort of force as, say, a cross, a red rose, or a white whale). In black trials, I believe, it is minute details that have had the ultimate power to denote, to make concrete, the conceptions of race, law, and civic belonging around which the trials revolve—and to give effect to their ritual process. To retrieve the symbolic aspect of black trials demands their history be told in a particular way, for symbols carry meanings that can be best apprehended within the form of a narrative, meanings apt to be lost in the isolation wrought by other kinds of analysis. Symbols form through juxtaposition and repetition, through the weaving of webs of significance within the larger web of culture, and the meanings of those symbols are largely irreducible; they generally are not subject to paraphrase and cannot be separated from their representation.

We might in this context return for a moment to the *Plessy* case. Among the important symbols of the case, for instance, are trains—recall that the dispute concerns Jim Crow on the East Louisiana Railroad. In the 1890s, trains were icons of social and economic progress whose praises were sung by politicians and poets alike. They were symbols of speed and modernity, engines of geographical and political consolidation and the glories of national economic expansion. Railroad construction was to the nineteenth century something of what the space race was to the twentieth. To attack Jim Crow on a train thus was to attack segregation at the symbolic heart of America itself. Conversely, racial segregation on trains reduced the status of blacks in the public space that most represented the promise of national life.